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### The Sixth Pan American Conference, Part I.

OF the six Pan American Conferences held during the last forty years, the one just ended at Havana is, from the political standpoint, the most interesting and important. In the background of this Conference hovered the "intervention" of the United States in Nicaragua. Apparently to forestall any attacks against this "intervention," President Coolidge attended the Conference—the first American president to set foot on Cuba's soil—while the United States was further represented there by an exceptionally strong delegation. Although no outbreak against the United States took place, vigorous debates did occur in regard to the establishment of an American League of Nations, the policy of intervention, tariffs, immigration, aggressive war and arbitration. In a few cases, the Conference took definite action in regard to these subjects; in other cases it did nothing. The course of these discussions, marked at times by tense

debate, is discussed in the present Report, which is published in two parts. Part I of the Report, deals with the political matters before the Conference. Part II will deal with non-political matters; it will not be published until the official translations of the Conference resolutions are available.

The Sixth International Conference of American States met at Havana from January 16 to February 20. It was opened with speeches by President Coolidge and President Machado in the Teatro Nacional. President Coolidge arrived in Havana for this purpose on the battleship *Texas*, on January 15. He was accompanied by Secretaries Kellogg and Wilbur. He left on January 17.<sup>2</sup> Unlike the 1923 Conference at Santiago from which Mexico, Bolivia and Peru absented themselves, all the twenty-one states which are members of the Union were represented at Havana, with a total of eighty-three delegates. Many government

1. Cf. *Pan Americanism and the Pan American Conferences*. (F. P. A. Information Service, Vol. III, No. 19.); Carbonell, Néstor, *Las Conferencias Internacionales Americanas*, p. 606. Part II of this report, dealing with the non-political work of the Conference, will be published as soon as the official translations of the relative treaties and resolutions are made.

2. The United States delegation was composed of Charles Evans Hughes, Ambassador Noble B. Judah, Ambassador Henry P. Fletcher, Ambassador Dwight Morrow, Morgan J. O'Brien, James Brown Scott, Leo S. Rowe, Oscar W. Underwood, Ray Lyman Wilbur. On January 23, Mr. Morrow returned to his diplomatic post in Mexico.

delegates were accompanied by technical advisers;<sup>3</sup> Mexico had seventeen, Cuba ten, Brazil two, Argentina three, Chile two, and the United States six.<sup>4</sup> About one hundred newspaper correspondents were present.

Contrary to reports, no League of Nations observers were present.

#### ORGANIZATION OF THE CONFERENCE

In accordance with diplomatic custom, Mr. Antonio de Bustamante, President of the Cuban delegation, professor at the University of Havana, and member of the Permanent Court of International Justice, was elected President of the Conference. The Secretary-General, appointed by the President of Cuba, was Mr. Nèstor Carbonell.

The Conference was directed by a "Commission on Initiatives"—or steering committee—composed of the head of each delegation, presided over by Mr. Bustamante. In general this Commission directed the Conference. The items on the agenda were studied by the following Commissions:

Commission No. 1—Pan American Union.

Commission No. 2—Public International Law and Police of Frontiers.

Commission No. 3—Private International Law and Legislative Uniformity.

Commission No. 4—Problems of Communications.

Commission No. 5—Intellectual Cooperation.

Commission No. 6—Economic Problems.

Commission No. 7—Social Problems.

Commission No. 8—Report on Treaties, Conventions and Resolutions.

These Commissions, each of which had a

Latin American as chairman, were composed of representatives of each delegation.<sup>5</sup>

It was agreed that their meetings should be held in public, unless otherwise decided. In practice, all of the Commission meetings and also the plenary sessions were open to the public. Meetings of Sub-Commissions, however were held in private.<sup>6</sup> Discussions were usually carried on in Spanish.

When a speaker used either English or Portuguese, an interpreter translated his remarks into Spanish. The United States delegation did not as a rule, ask for the translation of Spanish speeches into English. Several of its delegates understood Spanish, while the others were accompanied by interpreters who quietly translated what was being said.<sup>7</sup>

Each Commission elected its Chairman, Vice-Chairman, Secretary and one or more "Ponentes," or Reporters. The Reporter drafted concrete proposals which were subject to approval by the Commission. Within each Commission a preliminary decision was taken by majority, but in the event of a serious difference the matter was referred to a Sub-Commission, which attempted to find a formula which could be unanimously accepted.<sup>8</sup>

When the Commissions reached an agreement the results were reported to the plenary session which usually adopted the resolutions proposed.

Article 17 of the Regulations of the Conference declared: "Except in cases expressly indicated in these regulations, resolutions, or motions under consideration by the Conference are approved when they have obtained the affirmative vote of an absolute majority of the delegations represented. . ." In practice, if an agreement had not been

3. Fourteen of the delegates had been connected with some League of Nations organization.

The admission of Canada to the Union was discussed at the meeting of the American Jurists at Rio. Espinola, E. & Dos Reis, A. M. *A Codificação do Direito Internacional, Pandectas Brasileiras, (Separata)*, p. 438. It was also informally discussed at a recent meeting of the Governing Board of the Pan American Union. At the Radio Conference in Washington last November, Canada won the sympathy of the American states in its stand upon wave lengths. In private conversations at Havana, Canada's entrance into the Union was discussed sympathetically, although some delegates stated that, unlike the other American states, Canada was not a republic and that its freedom of action might be limited by its membership in the British Empire. It seemed to be agreed that the first move should come from Canada.

4. In the case of one commission, technical advisers were allowed to take part in the debate but not to vote. *Diário de la Sexta Conferencia Internacional Americana*, p. 247; hereafter cited as *Diário*, (the official minutes).

5. The Chairmen were as follows: Commission No. 1, E. Olaya Herrera of Colombia; Commission No. 2, Gustavo Guerrero of Salvador; Commission No. 3, Victor Mántua of Peru; Commission No. 4, Sampaio Correa of Brazil; Commission No. 5, Gonzalo Zaldumbide of Ecuador; Commission No. 6, Salvador Urbina of Mexico; Commission No. 7, Aristides Agüero of Cuba; Commission No. 8, Pérez Alfonseca of the Dominican Republic. A delegate of the United States, James Brown Scott, was vice-president of Commission No. 3.

6. Some journalists stated that the chief effect of holding the Commission meetings in public was to transfer delicate business to the Sub-Committees, or to informal meetings of the "Ponentes." Cf. *La Ilusión de la Diplomacia Abierta*, (*Diário de la Marina*, January 24, 1928, p. 12.)

7. With a very few exceptions, none of the American newspaper correspondents knew Spanish; they derived a large part of their knowledge from the daily press conferences of Mr. Hughes.

8. *Diário*, p. 146.

reached in a commission, important resolutions upon which there was serious opinion were not put to the vote in plenary session.

The Conference held seven plenary sessions and adopted eleven conventions, eight motions, three agreements and sixty resolutions.<sup>9</sup> The Conventions are as follows:

1. Convention Accepting and Putting into Effect the Code of Private International Law.
2. Convention on Commercial Aviation.
3. Convention on the Pan American Union.

4. Convention on the Revision of the Copyright Convention of Buenos Aires of 1910.
5. Convention on the Status of Foreigners.
6. Convention on Treaties.
7. Convention on Diplomatic Officers.
8. Convention on Consular Agents.
9. Convention on Neutrality.
10. Convention on the Right of Asylum.
11. Convention on the Rights and Duties of States in case of Civil War.

It was decided to hold the next Conference in Montevideo.

### THE STATUS OF THE PAN AMERICAN UNION

One of the most important questions confronting the Conference was the status of the Pan American Union. This question came before Commission No. 1, and in the discussion three main questions arose: (a) whether or not any form of convention defining the status of the Union should be adopted, (b) what form the organization of the Union should take, (c) what its powers should be.

Hitherto, the Pan American Union has not rested upon an international treaty, as does, for example, the League of Nations, but merely upon the resolutions of each successive Pan American Conference. The advantage of a treaty would be that it gives a more firm juridical basis to the organization than it has at present. Apparently for this reason, the Governing Board prepared a draft convention, and Commission No. 1 at Havana finally decided that such a convention should be signed.<sup>10</sup>

The next question to be decided was whether the Convention could go into effect or could be amended by a certain majority of states—a procedure followed in a number of important conventions.<sup>11</sup>

9. The more important resolutions are discussed throughout the text and in Part II. They are summarized in Appendix C, *Organization and Functions of the Pan American Union as Affected by the Conventions and Resolutions adopted at the Sixth International Conference of American States, Havana, January 16-February 20, 1928. Report Submitted to the Governing Board of the Pan American Union by the Director-General, March 7, 1928. Appendix "C."*

10. *Diario*, p. 310.

11. The Treaty of Versailles went into effect upon ratification by Germany on the one hand and by three of the Principal Allied and Associated Powers on the other. (Article 440.)

The League of Nations Covenant may be amended by unanimous vote of the Members of the Council and by a majority of Members of the Assembly. No such amendment binds any Member which signifies its dissent, but in that case it shall cease to be a Member. (Article 26.)

In accordance with the suggestion made by the head of the Peruvian delegation, it was decided that all of the twenty-one American republics must sign the Pan American Convention before any government may submit it for ratification.<sup>12</sup>

This is an unusual provision to find in an international convention—the failure of one state to sign apparently will prevent submission of the treaty for ratification.

Apparently with the League Covenant in mind, Mr. Guerrero moved that the Pan American Union Convention should go into effect upon ratification by the majority of States, and that if a State did not ratify within two years, it would be considered to have given notice of withdrawal from the Union.<sup>13</sup>

But this proposal was rejected on the ground that it would divide the Americas into groups, one of which would be inside the Union and the other out. It was finally provided that the Convention must be ratified by all the twenty-one republics before going into effect and that any amendments to the Convention must be made in the same way.<sup>14</sup> Even if twenty-one States do sign and ratify, no amendment may be made except by unanimous consent.

It was likewise finally decided, also apparently in imitation of the League Covenant, that "the contracting States may

12. *Diario*, 560; Pan American Union Convention, Article XIV.

13. *Diario*, p. 337.

14. Pan American Union Convention, Articles XIII, XIV.

withdraw from the Pan American Union at any time, but shall pay their respective quotas for the period of the current fiscal year."<sup>15</sup>

It was pointed out, however, that a considerable period would inevitably elapse before the ratification of this convention, which must be unanimous, and that it was therefore desirable to have the Conference adopt a resolution which would govern the organization pending ratification. This was done and a resolution adopted simply stating that "the Pan American Union will be controlled by the resolutions in force until the States composing it resolve to the contrary," subject to five modifications shortly to be discussed.<sup>16</sup>

Thus the situation is that the Pan American Union rests upon a resolution of the Conference until the convention is unanimously ratified. This convention will have to be submitted to the parliaments of each of the governments concerned, for approval. If one may believe press reports, there is a strong feeling among some parliaments, which are less subject to diplomatic considerations than governments, against the whole idea of Pan Americanism. The submission of the convention will give them an opportunity to attack the idea and to criticize especially the Latin American policy of the United States. It is entirely possible that a number of legislatures may decline to approve the convention, and the interesting question will then arise: Can a state whose legislature has declined to approve the convention establishing the Pan American Union continue to participate in that organization?

#### MEXICO ATTEMPTS TO REORGANIZE THE UNION

Some Latin Americans have stated that the Pan American Union is under the control of the United States. The seat of the Pan American Union is in Washington; hitherto the Director-General of the Pan American Union has been a citizen of the United States; and at the last two Pan American Conferences, he has been a mem-

ber of the delegation of the United States. Moreover, before 1923 the Secretary of State of the United States was chairman of the Governing Board. In an attempt to make the Union more democratic, the 1923 Conference at Santiago provided that hereafter the chairman should be elected. It is understood that, following this decision, the Governing Board attempted to elect a chairman, but that rivalry became so keen, it was decided automatically to elect the Secretary of State of the United States as chairman and to rotate the position of vice-chairman between the other members in accordance with the time of their residence in Washington.<sup>17</sup>

Before 1923 the representatives on the Governing Board consisted of the diplomatic representatives of American governments accredited to Washington. Under this system, a state which severed its diplomatic relations with Washington was deprived of its representation in the Union. The Santiago Conference provided that in the absence of a diplomatic representative, a state could appoint a special representative. Despite this change, the Governing Board continued to be a diplomatic body, some of the members of which were ambassadors, others ministers, and still others *chargés d'affaires*.

Such was the situation when the Havana Conference opened. In the first week the Mexican delegation proposed six amendments, five of which aimed at reducing the influence of the United States and making the Union more democratic. These amendments were as follows:

1. The Governing Board should be composed of the representatives whom the Governments may deem it convenient to appoint.
2. The appointment of Chairman and Vice-Chairman should be renewed annually, according to alphabetical order.
3. A Director-General should be appointed annually and the position should rotate between the countries.
4. The Director-General should not accept from the government of any country,

15. Pan American Union Convention, Article XII.

16. *Diario*, p. 524. Cf. p.

17. At Havana Mr. Pueyrredón said that "it is an elementary duty of courtesy" to elect the representative of the country in which the Board meets as chairman of the Board. *Diario*, p. 200.



other offices or commissions than those of a purely educational nature.

5. The Pan American Union should not be assigned any political functions.<sup>18</sup>

6. The Governing Board should decide which posts on the staff of the Pan American Union it deems convenient to be held by Latin American nations.

The first proposal won the support of Mr. Hughes, who declared that in his opinion the Republics of Latin America should have the fullest liberty in designating representatives on the Pan American Union. The proposal was adopted on the understanding that a state was not barred from naming its diplomatic representative in Washington.<sup>19</sup>

The proposal that the position of Chairman and Director-General should be annually rotated did not meet the approval of the Commission because of the view that this would destroy continuity.

Mr. Hughes declared that the United States did not wish any special privileges in relation to the Union. "We have great resources. We have power. We make no apology for that—we rejoice in that. We wish the benefits of it to be shared by others." But he believed that "democracy resting upon equality demands freedom, not unnecessary restriction." In an effort to compromise the two conflicting views—of free election versus rotation—it was proposed that, after the same person had served as president for two terms, another should be elected.<sup>20</sup>

Although Mr. Hughes accepted this suggestion, Santo Domingo, Brazil, Argentina, and Venezuela opposed any departure from the principle of free election and the compromise was withdrawn. Mexico's proposal for an annually rotated chairman was defeated by a vote of 19 to 1, while her proposal for a rotating Director-General was withdrawn until the next conference.

The proposal barring the Director-General from holding other offices was aimed at Dr. Rowe's position as a delegate of the United States. It led to the explanation by Mr. Hughes that the only reason Dr. Rowe

was a member of the delegation was because "there was no appropriation available by which he could come representing the Union."<sup>21</sup> Dr. Rowe was not at Havana as a partisan of the United States.

To prevent the repetition of this situation, Mr. Hughes proposed an amendment stating that the Director-General should attend the Conferences in an advisory capacity, and at the expense of the Union.<sup>22</sup>

The provision was incorporated in the Convention, but not in the Resolution which governs until the Convention goes into effect. It is doubtful whether unanimous ratification will be obtained for the Convention by the time of the next Conference in 1932, and the question will then arise whether the Governing Board may pay Dr. Rowe's expenses. In view of the provisions already in the budget, this would seem possible.

Finally, a resolution was adopted based on Mexico's sixth proposal stating that the Director-General shall appoint the personnel in the Union, "endeavoring as far as possible to distribute the positions among the nations of the countries members of the Union."

#### POLITICAL POWERS DENIED TO THE UNION

Hitherto the Pan American Union has not attempted to discuss any so-called "political questions." In view of the disputes on the American continent and the general tendency in favor of international organization, various proposals to develop the Union in this direction have recently been made. The movement to give political powers to the Pan American Union reached its height at the Santiago Conference in 1923 and action in this direction might have been taken had the United States been sympathetic to the idea. At this Conference Uruguay and

18. This is discussed on p. 55.

19. *Diario*, p. 148.

20. *Diario*, p. 436.

21. When Dr. Rowe was appointed a member of the delegation of the United States, the Governing Board of the Pan American Union asked Dr. Gli Borges, the Assistant Director, to represent the Union at Havana, *Diario*, p. 201. It is understood that he was the guest of the Cuban Government. Nevertheless the 1927-1928 budget of the Pan American Union contains a sum of \$7,800 for "Various and unforeseen expenditures," and in 1926-1927 the Union voted \$2,600 to Dr. Rowe "for certain obligations of an official character." In that year the Board also set aside \$3,600 for travelling expenses of which \$1,287.98 was actually used.

22. *Diario*, p. 201. Cf. Paragraph 3 of Article IV, Pan American Union Convention.

Costa Rica suggested the establishment of an American League of Nations.<sup>23</sup>

In 1924 the American Institute of International Law proposed that in case of menace or violence by one nation against an American republic "the continental solidarity" will be affected, and any American Republic may direct itself to the Pan American Union with the object of bringing about an exchange of views on the subject.<sup>25</sup>

Mr. Maurtua of Peru made a similar suggestion at Havana.<sup>26</sup>

The Institute also proposed that American Republics directly injured by a violation of international law may address themselves to the Union in order that it may bring about an exchange of views on the matter.

The idea of granting political powers to the Pan American Union had its proponents at Havana in 1928. The agenda contained a proposal made in 1927 by the Rio committee of jurists to give the Governing Board authority to conciliate disputes between American States and certain powers in regard to neutrality.<sup>24</sup>

The Cuban delegation also proposed the creation of a section in the Union on International Conciliation to promote the "solidarity of the collective interests of the American Republics," to investigate the causes of conflicts between the American Republics, to attempt to bring about a formula of harmony; and to study and recommend the institutions to improve specific relationships.<sup>27</sup>

It had been suggested that the United States should consult with the Union to determine whether intervention in a given situation would be desirable.<sup>28</sup>

The Dominican delegation at Havana was instructed to support a proposal that the Governing Board should make recommendations as to the recognition of Governments in any American country.

23. Cf. Also President Brum's article *Solidaridad Americana*, (Revista Argentina de Derecho Internacional, 1921-1922, p. 224.)

24. Pan American Union. *International Commission of Jurists: Public International Law*. Project XII, Article 17, p. 39; Project IX, Article 2, p. 27.

25. Pan American Union. *Codification of American International Law*, p. 37.

26. *Diario*, p. 253.

27. *Diario*, p. 196.

28. Cf. Buell, R. L., *The United States and Latin America—A Suggested Program*. (F. P. A. Information Service, Vol. III, Supp. No. 4.)

## THE VARELA AMENDMENT DEFEATED

In the early days of the Conference both Mexico and Salvador took up cudgels against any attempt to strengthen the powers of the Pan American Union, partly on the ground that this would merely increase the control of the United States over Latin America.<sup>29</sup>

Mexico proposed as an amendment to the Pan American Union Convention that the Governing Board should not exercise any political functions.

Opposition to this proposal came from the Uruguayan member of Commission No. 1, Mr. Varela, who proposed an amendment to the effect that this prohibition could be overruled by unanimous consent of the Contracting States, apparently through their representatives on the Governing Board. If several States should unanimously desire the assistance of the Union in conciliating a dispute, he did not believe any constitutional bar to such request should be erected.<sup>30</sup>

The representative of Brazil took the same point of view. He stated that "the evolution of international relations is in the direction of a general discipline over collective interests, establishing an organization in which the liberty of each is limited by the rights of the others. . ."

The delegate of Colombia made a long speech favoring the Varela amendment, part of which is as follows:

"... Unfortunately the continental politics of America are not carried on upon a basis of sincerity and of frankness; theoretically, the international policy of America is fraternity but actually it is fear and hate. Why should we deceive ourselves. . . ?" Europe was showing America that it was possible for enemies to clasp hands, and to build a higher conception of law. He considered "that if the Pan American Union is to have a logical development in the future, it is indispensable that it should be like a mirror—the reflection of all the harmonious forces of our peoples, so that it may take up with a spirit of justice and sincerity the problems which divide them.

"How many times in the course of diplomatic history in the last decade could timely friendly action have avoided the conflict which afterwards we regretted? How many times would

29. Cf. p. 53.

30. *Diario*, p. 397.

these problems . . . have been solved if the disinterested, impartial and friendly assistance of all the American republics had brought these peoples to brotherhood, justice and the conception of law. . . ? How many times have we not seen situations in which our isolation makes us impotent, but where joint action, inspired by justice and good will would have harmonized interests which on the surface seemed antagonistic? And if this is so, gentlemen, why are we alarmed by this timid insinuation that in the future, States may do this in agreement among themselves?" Pan Americanism must embrace every activity making for peace. He voted for the Varela amendment, believing that some day "the union of the peoples of America in an assembly representing all their strength, may serve the peace of peoples, avoid political conflicts and unite them in an entity of political, economic and cultural interests."<sup>31</sup>

Despite these pleas the Varela amendment was defeated by 12 to 6. Costa Rica, Paraguay, Cuba, Colombia, Uruguay and Guatemala voted in favor of it. The United States remained silent during the debate but voted "No."<sup>32</sup> The Mexican proposal was thereupon adopted.

The Commission even suppressed a proposal that the Governing Board be authorized to see to it that treaties are respected, on the ground that this was a political power.<sup>33</sup>

As a result, any proposal to give the Governing Board powers of conciliation and the like cannot be put into effect without an amendment to the Convention requiring the unanimous approval of the governments concerned. One state will have the *liberum veto*. The Convention states that not only the Governing Board but also the Pan American Union is debarred from exercising political functions. Presumably this will prevent the establishment of an American conciliation commission as suggested by Mr. Guerrero.<sup>34</sup>

31. *Diario*, p. 400.

32. *Diario*, p. 400. In opposing the Varela amendment, Mr. Guerrero of Salvador stated that now when the Union did not act in the face of a dispute public opinion criticized its inactivity, but would not do so if there was a clear-cut pronouncement that the Union had no political power. *Diario*, p. 397.

33. *Diario*, p. 394.

34. Cf. p. 74. The Cuban delegate made a reservation to the effect that the above provision should not prevent the Union, or a special body, from exercising powers of conciliation. (*Diario*, p. 395.) The fact that he deemed the reservation to be necessary—a reservation binding only himself—would constitute an admission that the contrary situation would otherwise be the case.

Mr. Urbina of Mexico defined political acts as follows:

" . . . any act takes on a political character which tends to destroy any sovereign right whatever of a State over any matter whatever." *Diario*, p. 398.

## RESTRICTIONS IMPOSED ON GOVERNING BOARD

Several other restrictions were imposed upon the Governing Board, which may also prevent its institutional development. The draft convention originally provided that the Governing Board should derive its powers from the Convention and also from resolutions of the Pan American Conferences. Thus the powers of the Board could be periodically extended (and even perhaps by majority vote) by such Conferences. But the provision was amended so as to provide that the Governing Board should derive its powers only from the Convention, the most important of the powers thus granted being to "assist in the development of commercial, industrial, agricultural, social and cultural relations, in the study of the problems of labor, and of a more intimate mutual acquaintance between the American Republics."<sup>35</sup>

Thus the powers of the Board cannot be extended by successive conferences but only by an amendment to the Convention.

A third proposal arose out of a proposal of Venezuela which declared that "any State may, not only in the organization but also in the functionings" of the Union demand unanimity "in any matter which it considers vitally affects its interests, without this desire being discussed or disregarded." Mr. Guerrero insisted that unanimity in matters of simple procedure would be very dangerous and Mr. Hughes stated that ordinary activities should not be subject to a vote.<sup>36</sup>

Nevertheless, a provision was finally adopted stating that when a state believes that its vital interests are involved in a question, or that an obligation may be imposed upon it, such state may require that the resolution of the Board be adopted by a unanimous vote.<sup>37</sup> It is not clear whether under this provision unanimity may or may not be demanded in cases of resolutions of procedure.

Having barred political activities and restricted the powers of the Board to those

35. Cf. *Diario*, p. 312 and Pan American Union Convention, Article VI. See appendix, p. 81.

36. *Diario*, p. 336, 337.

37. Pan American Union Convention. Article VI (5).

granted in the Convention, and having provided for unanimity on the Governing Board at the request of any State and for unanimity in amending the Convention, it would seem that the Havana Conference has effectively prevented any important development of the Pan American Union—at least along political lines.

#### ARGENTINA ATTACKS TARIFFS

An effort to bring important economic questions within the purview of the Pan American Union—or at least to mention them in the preamble of the Convention—was also made. As originally drafted, the proposed Pan American Union Convention contained no preamble. But Mr. Guerrero, of Salvador, stated that a preamble, recognizing the juridical equality and independence on all American states, should be embodied in its Convention. He said, "It would be very lamentable if in the preamble to the Constitution of the Pan American Union there should not exist postulates such as exist in the Covenant of the League of Nations."<sup>38</sup>

When it was decided to draw up such a preamble, Mr. Pueyrredón of Argentina insisted that it embody a declaration in regard to the reduction of economic barriers. He first brought this question up before Commission No. 1 on January 23. In a speech of nearly two hours he declared that originally economic unity was the principal basis of Pan Americanism. He recalled the terms of the law of 1888, passed by the United States Congress, stating that one of the objects of the first conference should be to formulate an American Customs Union. He recalled other proposals made in the United States, looking to the same end. Pan Americanism was originally aimed "to realize a work of economic cooperation among the peoples of America." The law of 1888 was a "Gentlemen's Agreement." It had never been repealed and should be the foundation upon which the Pan American organization should be constructed. The object of economic cooperation cannot and should not at any time be abandoned if they wish

to have "Pan Americanism remain strong and useful."

Important as the results of Pan Americanism so far have been, it would be difficult, Mr. Pueyrredón said, to mention very important results in regard to commercial progress. In fact, manifestations of an economic order had been produced which were injurious to economic Pan Americanism. These were: (1) high customs tariffs and (2) the so-called principle of equality in cost of production. Mr. Pueyrredón recognized that protection of its interests was within the sovereign right of each country. But he was speaking of the interest of the American community, and "any act for the extreme protection of a particular interest" injures other countries which have been promise reciprocal aid.

High tariffs did not affect the commerce of American states equally, because of different characteristics and classes of products. Countries which were in tropical or sub-tropical zones had no difficulty in selling their products to countries having a different climate. He implied that the products of Argentina—a temperate country competing with the United States—were in a much more unfavorable condition.

He believed that the principle of so-called equality in costs of production, despite its scientific appearance, was "even more grave than high tariffs." If the principle of equality of costs were applied there could be no international trade. Water did not flow on the level.

"We should not forget . . . that all the peoples of America have not arrived at the same state of economic development; some are at the pinnacle of their economic and industrial power; others hold an inferior economic position; and there are others struggling with difficulties of communication and other difficulties, because of the lack of capital. The only means by which these peoples can improve their position is by exporting products produced more cheaply than elsewhere."

If the doors were closed to these nations by the principle of equality of costs, economic Pan Americanism meant little. The principle penalized efficiency. He quoted Richard Cobden, Herbert Hoover, the recent Banker's Manifesto and the Geneva Economic Con-

38. *Diario*, p. 142, 145.



ference, in support of his position. Mr. Pueyrredón declared that if a political League of Nations had come to understand the necessity of bringing about economic harmony between peoples, how much more should the Pan American Union, which was founded upon an economic principle, take this stand. The consequences of economic struggle would be injurious to Pan Americanism.

Rich countries wished to export their capital to poor countries, but by high tariffs they obstructed the commerce by which interest on the capital could be paid. He hinted that unless high tariffs were reduced American countries might consider the possibility of negotiating preferential tariff agreements with non-American countries.<sup>39</sup>

The American nations were finding that economic cooperation was easier with Europe than with other American nations. Unconditional most-favored-nation treatment had been proposed as a remedy for these difficulties. But this principle was not convenient for America. It placed agricultural countries at a disadvantage with industrial countries. Under this principle one American state would be obliged to give privileges regardless of whether it obtained anything in return.

"In the forty years in which Pan Americanism as an institution has existed, I do not believe it has succeeded in penetrating the conscience or the soul of the peoples of America. I have not felt any spontaneous and ample manifestation of public opinion lending to Pan Americanism its warmth and strength. We have maintained it in the camps of official ranks . . . but the people have not yet felt it. We have not entered the popular soul. The people await practical results."

#### THE PUEYRREDÓN PROPOSALS

Mr. Pueyrredón definitely proposed that the Pan American Union Convention include the following principles:

1. That measures be taken to suppress or reduce excessive barriers that obstruct inter-American trade.

2. That all hindrances to free circulation and trade in agricultural products be

suppressed when this would not constitute a danger to the vital interests of the country or its laborers.

3. That in reference to sanitary police—for enforcing quarantines and embargoes which the United States, among other countries, maintains<sup>40</sup>—an organic system should be adopted that would prevent sanitary regulations from being exercised in an arbitrary manner.

He declared that if these principles were not expressly incorporated in the Convention, the Argentine delegation would feel unable to sign the agreement. He closed by quoting a statement of James G. Blaine to the effect that Pan Americanism was the application of Christian principles to international business.<sup>41</sup>

On February 10 the Sub-Commission to which this and other matters had been referred recommended the adoption of a preamble which did not include the Argentine proposal.<sup>42</sup>

Final decision on this question was left until February 13. Apparently to meet the desires of Argentina, the Sub-Commission had embodied a clause in the preamble stating that the Union desired to "promote effectively the harmonious development of the economic interests of the American Republics." The preamble, with this clause included, was approved in the Commission without debate.<sup>43</sup> But following such approval, Mr. Pueyrredón stated that he wished to reiterate what he had said previously; namely, that this Convention should include at least the expression of a desire that Pan Americanism should return to the ideas of Blaine. If President Wilson could say in his Fourteen Points that the removal of trade barriers was essential to world peace, he did not think that he, Pueyrredón, was proclaiming anything impossible. "I am not proclaiming free trade. I do not pretend to suggest that any nation modify its policies in a manner that may injure its interests. I simply ask that we consider the

40. Cf. *The Franco-American Tariff Dispute*. p. 254. (F. P. A. Information Service, Vol. III, No. 17.)

41. The official *Diario* does not give an adequate summary of the speech; but it is reprinted verbatim in *El Heraldo de Cuba*, January 24, 1928.

42. *Diario*, p. 393.

43. *Diario*, p. 432.

39. In Article 2, (3) of the Austro-Spanish Commercial Treaty of February 3, 1925, Austria renounces any claim to benefit by preferential duties which Spain may grant to Latin-American republics. League of Nations, *Treaty Series*, 1926, Vol. XLIII, p. 317.

possibility of moving toward that end." He categorically declined to sign the Union Convention unless it contained such a declaration.

#### MR. HUGHES OPPOSES

Mr. Hughes made a speech in answer to the Argentine position in which he said:

"We are desirous of promoting Pan American cooperation—not of destroying it." These economic barriers have been established by the legislatures of the states in what they conceived to be the interests of the people of these States. "The right to protect the people of a country in determining what goods shall enter a country, what duties shall be imposed, or what export taxes shall be imposed is of the essence of sovereignty. Each of our countries has provisions relating to the import and export of products and raw materials which it thinks are essential and well-devised. They may be debated, they may be the subject of internal discussion, but legislation in these respects, through the Parliaments or Congresses of the Nations, represents the sovereign will.

"What Mexico will do in regard to oil production and export taxes; what Chile will require about nitrates; what Salvador will do with regard to the duties to be imposed upon various articles, are all matters which these countries have frequently determined in the expression of their internal authority.

"... To introduce the Pan American Union into these most delicate of all subjects, relating to the exercise by independent and sovereign states of their will, with respect to the articles coming in or leaving their boundaries, would be simply to invite the destruction of the Pan American Union by making it the center of controversies which it could not resolve and to put it in opposition to the Parliaments and Congresses of the various states. If any particular country has a question with another country, as to particular goods, or duties, or taxes, the way to approach the subject, it would seem to me, would be through negotiations and through the presentation of facts which can reach the proper legislative authority. And such facts may be considered by each country as it determines its action as to its exports and imports."<sup>44-45</sup>

Moreover, he went on to say, it was difficult to draw the line between political and economic questions. In the United States

the tariff had come to be regarded as a political question. Argentina had voted against granting political powers to the Pan American Union; yet now it proposed to extend its scope in economic matters.

Mr. Hughes closed by saying, "Let us continue our cultural work, our cooperation in those lines where we feel we have a community of interest; where we realize that good can be accomplished; and let us not destroy the Union by attempting to make it a tariff commission, or a tax commission, for the purpose of impinging upon our respective authority as independent States."

In reply, Pueyrredón stated that his proposal would not affect the sovereignty of states; he wished a mere declaration; they could accept his proposal if they wished to do so. Every treaty concerns the sovereignty of a state.

Other members of Mr. Pueyrredón's delegation did not feel that Argentina should refuse to sign the convention because of this question. On February 10, Felipe Espil, a member of the delegation, cabled President Alvear of Argentina, warning that failure to sign the convention would be interpreted as a death-blow to the Union and an act against the United States. He asked that President Alvear, if he concurred in this view, should instruct Pueyrredón to sign the convention. Dr. Alvear cabled Pueyrredón praising his attacks against high tariffs, but asking him to sign the convention. After a further exchange of cables, the Foreign Office instructed Pueyrredón not to attend commission meetings until the return of President Alvear, who was out of town. But this message reached Pueyrredón too late to prevent him making his declaration of February 13. On February 15, Pueyrredón cabled the Foreign Office that he could not sign the convention. Previously, he implied that it was strange that the Foreign Office should at this late date take a contrary point of view, in the light of the original congratulations he had received on his initial speech. He concluded by submitting his resignation as head of the delegation and as ambassador to Washington. The Foreign Office immediately replied, asking

<sup>44-45.</sup> He later favored the submission of such questions to fact-finding commissions instead of to the Union. Cf. p. 75. Yet apparently he made no such suggestion in connection with this debate.

Puerrredón not to resign and telling him that it was not necessary to sign the convention. But Mr. Pueyrredón stood his ground, and his resignation was announced on February 17. Mr. Olascoaga, Argentine Minister to Cuba, then became head of the delegation. The *Prensa* severely criticized the Argentine Minister of Foreign Affairs for a "vacillating and impotent policy." *La Nación* stated that Pueyrredón had exceeded his instructions and that the application of his theories would be fatal to Argentina.<sup>46</sup>

The Argentine Government finally instructed its delegation to accept the Pan American Union Convention; in so doing, however, the head of the delegation declared that he "regretted not to see included in this convention the economic principles" which Argentina had advanced in the Commission.<sup>47</sup>

While Argentina thus took the lead in attacking high tariffs—an attack which was regarded as being directed against the United States—several other states expressed sympathy with this stand. In the fourth session of Commission No. 1, the chief of the Paraguay delegation expressed his "complete adhesion" to Pueyrredón's proposal; and the Bolivian delegate likewise praised his speech.<sup>48</sup>

Mexico took a similar stand. On February 11, it submitted to the Steering Committee a project for an international quarantine conference, which stated that the Argentine delegation had called the attention of the Conference to the problems arising out of tariff barriers and other obstructions to agricultural production. It agreed that international trade was obstructed by such policies. "A situation of this kind is not only illogical but also anti-economical. The day will arise perhaps when tariff walls will be obliterated. . . ." These barriers could not, however, be suppressed immediately. Nevertheless, Mexico thought it would be

easy to adopt a uniform system of sanitary quarantines, under which producers in various countries could be warned regularly and ahead of time so that a case would not arise in which producers would suddenly be deprived of a market.<sup>49</sup>

A delegate of Colombia also expressed sympathy with Mr. Pueyrredón's idea of an economic agreement.<sup>50</sup> Despite these expressions, the move to give the Pan American Union more economic importance than it has held in the past came to an unsuccessful end.

Little more successful was the Cuban proposal to establish a section in the Pan American Union on the organization of labor, designed to study the social results of production and to make recommendations in regard to the regulation of institutions of a social character.<sup>51</sup> This project was apparently aimed at the establishment of a Pan American International Labor Office. Although it failed of adoption, the Union was authorized to assist "in the study of the problems of labor."<sup>52</sup>

#### THE PAN AMERICAN UNION REVISED

The Resolution and Convention authorizing the existence of the Pan American Union were adopted by the Conference on February 18. As a result of this Resolution, the Pan American Union continues in effect, subject to the following changes:

1. The Governing Board shall be composed of the representatives that the governments of the American Republics may wish to appoint; it being provided, however, that the appointments may devolve upon the diplomatic representatives of the respective countries at Washington.

2. Neither the Governing Board nor the Pan American Union shall exercise functions of a political character.

3. The Director-General shall appoint, with the approval of the Board, the personnel necessary to the work of the Pan American Union, endeavoring as far as possible to distribute the

46. The text of the cables is published in the *Diario de la Marina*, February 17, 1923; a summary is given in the *New York Herald Tribune*, February 19, 1923. American newspaper correspondents stated (*New York Times*, February 12, 1923, p. 5) that Pueyrredón's action was influenced by his desire to be elected president in the forthcoming elections. But Pueyrredón was not a candidate for any office in the election of 1928.

47. *Diario*, p. 524.

48. *Diario*, p. 145.

49. *Diario*, p. 320. The outcome of this resolution will be discussed in the forthcoming Part II of this report.

50. *Diario*, p. 283.

51. *Diario*, p. 196.

52. Pan American Union Convention, Paragraph 3, Article VI.

positions among the nationals of the countries which are members of the Union.

4. The Governing Board shall fix the status of the members of the staff of the Union, determining their salaries and conditions of retirement.<sup>53</sup>

5. The member states may withdraw from the Pan American Union at any time, but shall pay their respective quotas for the period of the current fiscal year.

In addition to these changes, the Convention provided that the Director-General shall attend the Pan American Conferences at the expense of the Union. He is likewise directed to make a detailed report to each Conference on the work realized by the Union—an idea apparently taken from League of Nations procedure.<sup>54</sup> The Convention finally provides that the Union shall receive instruments of ratifications of Pan American treaties.<sup>55</sup> The expense of the Union is allocated according to population.<sup>56</sup> The quotas to be paid by each government are determined by the Governing Board. But increases in the budget, exceeding by more than 25% the budget of the preceding year, shall be approved by unanimous vote, the representatives being given time to consult their respective governments.

#### NEW DUTIES OF THE UNION

Although the Conference declined to grant the Union any political or important economic powers, it did impose a number of new duties upon the Union, the listing of which will give an idea of the present scope of its activities.

##### 1. The duty of convening conferences is

53. The original draft Convention authorized the Governing Board to draw up a pension plan for its employees. In the debate on this proposal, the delegate of Panama said his government could not accept this proposal on the ground that the Panama Constitution prohibited pensions. A nice constitutional point arose whether quotas paid into the Union could be used by the Governing Board for purposes prohibited to a state by its constitution. The wording of the final Convention was changed so as to avoid this difficulty. It authorized the Governing Board to determine "conditions of retirement." See *Diario*, p. 314.

The draft Convention also provided that each State should maintain a committee of Pan American affairs. But Mr. Hughes states that a Latin American division existed in the State Department which fulfilled this function, with the result that the Convention finally provided that this obligation to establish such a committee should not apply if a state already had an "efficient organ" for this purpose. See *Diario*, p. 314.

54. The proposal was first made by Salvador, *Diario*, p. 244.

55. Cf. p. 62.

56. The quotas are printed in the Appendix, p. 81. In addition to its quota based on population, including that of its territories, the United States contributes the cost of printing, etc.

imposed upon the Union in fourteen cases as follows:

- a. Pan American Congress of Journalists.
- b. Pan American Commercial Conferences.
- c. Commission of Bibliographic Experts.
- d. Pan American Pedagogical Congress.
- e. Inter-American Conference on Plant and Animal Sanitary Control.
- f. Conference on Inter-American Protection of Trade Marks.
- g. Conference on the Establishment of Steamship Lines and the Elimination of Unnecessary Port Formalities.
- h. Pan American Commission of Exporters and Importers.
- i. Pan American Congress of Municipalities.
- j. Technical Commission on Communication Statistics.
- k. Commission on Agricultural Cooperation.
- l. Inter-American Commission of Women.
- m. Conference of Rectors, Deans and Educators.
- n. International Commission of Jurists.

2. Duties of an educational and cultural nature and those relating to social problems are also imposed on the Union as follows:

- a. Cooperation with the Red Cross organizations of the American Republics.
- b. Cooperation in securing adoption of resolutions of Congresses of Journalists.
- c. Designation of the seat of the Geographical and Historical Institute.
- d. Preparation of the work incident to the meeting of the Commission of Bibliographic Experts.
- e. Collection of sums subscribed for completing the publication of the Dictionary of Don Rufino J. Cuervo; and to secure the cooperation of linguists to undertake the completion of the dictionary.
- f. Formulation of project for Institute of Intellectual Cooperation.
- g. Promotion of interchange of professors and students between the American Republics, etc.

3. The Pan American Union is responsible for certain special investigations and data as follows:

- a. A study of the basis of a permanent organization of the Pan American Congresses of Journalists.
- b. The publication of statistics on foreign commerce of the American Republics; and cooperation in securing adoption of the conclusions of the Pan American Commercial Conferences.
- c. A study of the regulation of the industrial and agricultural use of international rivers.
- d. Data on the construction of a longitudinal highway to traverse the Continent.
- e. A project on the adoption of a standard coin for the American Republics.
- f. Material for the Seventh Conference on the proposal that no state should impose restric-



tions on emigration or immigration to and from other American States.

- g. Reports, gathered from each government, on the obstacles to navigation on navigable rivers, to be submitted to the Seventh Conference.
- h. Preliminary work in connection with standardization of specification of commodities entering into inter-American commerce.
- i. Proposals in regard to agricultural cooperation.
- j. Cooperation in preparatory work for the codification of international law.
- k. Projects that shall serve as a basis for discussion on all technical subjects included in programs of future International American Conferences.

#### 4. Obligations relative to depositing of ratifications and notifications thereof to states members of the Union.

Article VII of the Convention on the Pan American Union provides that the instruments of ratification of treaties, etc., signed at Pan American Conferences, shall be deposited at the Pan American Union and that the Union shall communicate to all the states members of the Union notice of the deposit of the ratification.<sup>57</sup>

5. A large number of duties relating to the Seventh International Conference are also placed on the Union. These relate chiefly to items to be included in the agenda, and the preparation of draft conventions.

#### 6. Miscellaneous.

The Pan American Union is requested to transmit the study of international auto traffic by the second Pan American Congress of Highways to the states members of the Union. It is also requested to take the necessary measures to obtain the adhesion of the American Republics to the Brussels Convention on assistance and salvage at sea, of September 23, 1910; on naval hypothecations, of April 10, 1926; and on the limitation of the responsibility of ship owners, of November, 1922.<sup>58</sup>

Thus a large number of new non-political duties were imposed on the Union at the last Pan American Conference, many of which are, however, ministerial in nature.<sup>59</sup>

57. But this provision will not go into effect until after the Convention is ratified. Two of the eleven conventions signed at Havana, the Aviation and Copyright Conventions, do not provide that the instruments of ratification shall be handled in the above manner.

58. This classification of duties has been taken from the *Organization and Functions of the Pan American Union*, cited, p. 4-16.

59. Some of these will be discussed in more detail in Part II.

### POLITICAL QUESTIONS DISCUSSED

While the Conference did not entrust any political functions to the Union, it was used as a forum in which political questions were aired. Mr. Charles Evans Hughes took advantage of a banquet given him on January 21, 1928, by the American Chamber of Commerce of Havana to explain the Latin American policy of the United States. He declared:

"It is the firm policy of the United States to respect the territorial integrity of the American Republics. We have no policy of aggression. . . Nothing could be happier for the United States than that all the countries in the region of the Caribbean should be strong, self-sufficient, fulfilling their destiny, settling their problems, with peace at home and the fulfillment of their obligations abroad."

He recalled how the United States evacuated Santo Domingo<sup>60</sup> and stated that "we would leave Haiti at any time that we had reasonable expectations of stability, and could be assured that the withdrawal would not be the occasion for a recurrence of bloodshed." He also declared that the United States would retire from Nicaragua "as soon as it is possible."<sup>61</sup>

The Havana newspapers reduced editorial comment to a minimum from fear of the censorship of the Machado Government; nevertheless, they featured Nicaraguan news. General Sandino of Nicaragua sent a cablegram to the Pan American Conference which said:

"I protest against the presence of illegal delegates of the so-called President Adolfo Diaz; I protest against the hypocrisy of Coolidge, who speaks of good will and sends an army to murder Nicaraguans. I protest against the indifference and servility of the Latin-American delegates in the face of the encroachments of the United States. . ."<sup>62</sup>

A number of documents were clandestinely circulated at Havana criticizing the "imperialism" of the United States. The Communist party of Cuba published a manifesto—soon suppressed—part of which

60. Following this speech the head of the Dominican delegation stated that "the people and the Dominican Government did not solicit or approve this occupation and always protested against it." *Diario de la Marina*, January 26, 1928, p. 13.

61. Cf. Also his speech on intervention, p. 71.

62. This cable was printed in the *New York Herald-Tribune*, March 15, 1928.

recited the record of the United States in Porto Rico, Santo Domingo, Tacna-Arica, Nicaragua and Mexico and then said: "The common enemy of Latin American peoples, and even of the people of the United States, is the imperialistic capitalism of Wall Street, sustained and supported by the policy of the White House."

The January number of a Cuban magazine, *Atuei*, which the government also suppressed, contained articles aimed at the United States. One article advocated the establishment of a Latin-American Confederation directed against "Yankee capitalism." Another made a comparison between the nationalistic movement in China and "Latin-Americanism."

Another journal, called *America Libre*, was circulated with a sub-caption: "For a Union of American peoples against capitalistic imperialism in favor of oppressed peoples."

The All-American Anti-Imperialist League mailed a manifesto to the delegates asking them to "combat Pan Americanism, the instrument of Yankee Imperialism. . . Yesterday against Spain! Today against Wall Street!"

Various orators took occasion to discuss questions regarded by the United States as domestic—such as tariffs and immigration.<sup>63</sup>

At a committee meeting of the Conference, a delegate of Bolivia unexpectedly brought up the question of Bolivia's lack of

a seaport. He declared that "everyone knows that in America a nation exists which does not enjoy the plenitude of sovereignty, because enclosed in its mountains; it does not have free access to the sea and this nation cannot speak of independence, the basic foundation of Pan Americanism, as long as it is not reintegrated in its maritime sovereignty."<sup>64</sup>

A representative of Mexico and of the Catholic Church utilized the occasion to debate in the local press the treatment of the Church in Mexico.<sup>65</sup>

The National Woman's Party of the United States and other women's organizations carried on an ardent campaign in favor of a treaty granting the women of the American continent the same civil and political rights enjoyed by men. They achieved the distinction of being allowed to plead their cause before a plenary session of the Conference on February 7. The Conference passed a resolution authorizing the establishment of a Pan American Committee of Women, of seven members, to study the question.

The two Porto Rico leaders, Antonio Barcelo and José Soto, calbed the Pan American Conference asking the Hispanic republics there represented, to endorse a message sent by these leaders to President Coolidge, asking that Porto Rico be constituted a free State. The message to the President said, "Ours is the only Spanish-American country whose voice is not heard in Havana. . ."<sup>66</sup>

## THE QUESTION OF INTERVENTION

There is no precise agreement as to the definition of intervention, but usually it means the forcible interference of a great state or combination of states in the affairs of a small state, without a declaration of war.<sup>67</sup>

There are three views as to intervention:

1. The non-intervention view held by

63. Cf. p. 57. The immigration question is discussed in Part II.

67. For example, Mr. Hyde does not regard the temporary invasion of territory on grounds of self-defense or for the protection of nationals, "with no further object or result," technically as intervention. Hyde, C. C. *International Law*, Vol. I, p. 117. Mr. Hughes calls this "interposition." Cf. p. 71. Fauchille states that the question whether or not intervention is legitimate has depended upon purely political considerations in the past. *Traité de Droit International Public*, Vol. I, 1st Part, 8th Ed., p. 545.

64. *Diario*, p. 145.

65. Cf. Statements of the Archbishop of Yucatan, Mgr. Tutschler, and Ambassador Lerdo de Tejada of Mexico. *Diario de la Marina*, January 22, 23, 1928.

66. *New York Times*, January 20, 1928, p. 4.

fulfillment as interpreted by a great state.

2. The view of national intervention held by the Government of the United States. Whenever conditions exist in Latin America which cause governments to break down and whenever American property and lives are threatened, the United States Government has the right, if not the duty, under the Monroe Doctrine, to intervene for the purpose of bringing about a stable régime.<sup>68</sup>

3. The view of international intervention which admits that intervention in certain circumstances is justified, but believes that, as long as one state decides for itself whether intervention shall take place, the exercise of the "right" may be abused. According to this view the decision to intervene is often taken in an obscure bureau of the State Department without any authorization from Congress; and in some cases these officials act upon hasty judgment and a misconception of the facts which would be avoided if the decision to intervene were submitted to the international scrutiny of an organization such as the Governing Board of the Pan American Union or the League of Nations.<sup>69</sup>

All three of these views as to intervention were presented at Havana, and the question came squarely before the Conference in connection with the proposed codification of public international law.<sup>70</sup>

Whether or not intervention is permissible under the rules of international law has been a subject of discussion for many years. In the code of international law drafted by Mr. Pessoa on behalf of the Brazilian Government in 1912, an attempt to answer this question was made as follows:

No state shall intervene in the domestic affairs of another.

Sole Paragraph. Neither a treaty authorizing intervention in case of civil war, nor the invitation or formal consent of the government against which a revolution is directed, will make intervention legitimate.<sup>71</sup>

68. Cf. Mr. Hughes' statement, p. 71.

69. For a fuller discussion see F. P. A. *Information Service*, Vol. III, Supp. No. 4.

70. This subject will be discussed in Part II.

71. Article 19 of The Pessoa Code. Espinola, E. & Dos Reis, A. M.: *A Codificação Do Direito Internacional, Pandectas Brasileiras, (Separata)*, p. 71.

## AMERICAN INSTITUTE AND INTERVENTION

Following the Santiago Conference in 1923, the Governing Board of the Pan American Union asked the American Institute of International Law<sup>72</sup> to prepare a draft code of international law to be submitted to the Pan American Commission of Jurists which met in Rio de Janeiro in April, 1927. In drafting a declaration on the Fundamental Rights of American Republics, a committee of the Institute, composed of James Brown Scott, Alexandre Alvarez and Luis Anderson, inserted a provision prohibiting the intervention of non-American states in American affairs.<sup>73</sup> This non-intervention proposal was amended by the Institute at a meeting in Lima so as to apply this prohibition against American states as well.<sup>74</sup>

The final project submitted by the Institute to the Governing Board contained a sweeping provision against even the temporary occupation of American territory by any other state. In case this occurred, any American Republic could refer the matter to the Pan American Union.<sup>75</sup>

## NON-INTERVENTION AND THE RIO JURISTS

The Commission of American Jurists, to which this and other projects were referred by the Governing Board of the Pan Ameri-

72. This organization is composed of national societies in each country and contains five members from each such society.

73. This was taken from Mr. Alvarez's code; Cf. A. Alvarez, *Le nouveau droit international public et sa codification en Amérique*, p. 63. Cf. also Alvarez, *La Codification de Droit International, ses Tendances, ses Bases*.

74. The following quotation shows the changes. The italicized word was added and the words within brackets omitted by amendment.

Article II. American Republics are equal in the eyes of the law and possess the rights inherent in independent and complete sovereignty. Such rights, including territorial rights, can in no way be restricted to the profit of another [a non-American] State, even with the consent of the interested American Republic.

Article III. For no reason whatever may a [non-American] State, either directly or indirectly, or through the agency of intermediary persons, occupy even temporarily any part of the territory of an American Republic in order to exercise the sovereignty therein, even with the consent of the said Republic.

Article V. In case of violation of the provisions of the preceding articles by one or more [non-American] States; or in general, in case of offenses or acts of violence, individual or collective, committed by these States with respect to an American Republic, the continental solidarity will be affected thereby, and any American Republic may refer the question to the Pan American Union in order to bring about an exchange of views on the subject. American Institute of International Law, *Informal Conversations of Lima, December 20-31, 1924*, p. 27.

75. Cf. the text of the article in preceding footnote.

can Union, assembled at Rio de Janeiro in April, 1927 at a time when the Nicaraguan question was in the air. At the first session, the President of the Conference, Judge Pessoa of Brazil, read a telegram from the Minister of Nicaragua to Mexico, asking the Conference to make an express declaration condemning the policy of the United States in refusing to recognize the rights of small nations. He protested against the "imposition of Señor Diaz" as the President of Nicaragua, "contrary to the national will and the categorical provision of our constitution, by the blockade of our coasts . . . and by the illegal act of North American marines in establishing arbitrary 'neutral zones,' which are a free refuge for ruined enemies and bases of supply for evil citizens who undermine the liberty of the country."<sup>76</sup>

In reply, the President of the Conference sent a telegram stating that the Commission was of an "exclusively juridical character" without any authority to take the action requested. The steering committee was so afraid of passing any judgment even indirectly upon Nicaragua that it decided to set aside the extreme non-intervention proposal of the American Institute of International Law in favor of the Pessoa proposal. After further discussion it was decided not to discuss any non-intervention agreement.<sup>77</sup>

This decision did not satisfy Mr. Luis Anderson of Costa Rica, who, in a meeting of Sub-Commission A, on April 30, proposed the adoption of the provision originally appearing in the Pessoa code: "No state may intervene in the domestic affairs of another." The delegate of Argentina urged the adoption of a more extreme proposal; but it was agreed that in view of the "turn of events now taking place in the policy of the continent," they should go no further. Mr. Mautua of Peru (who later stood against the adoption of the proposal at Havana) said that the Costa Rica proposal should be un-

animously approved. According to the minutes the delegates rose to their feet and approved the proposal by acclamation.<sup>78</sup>

Some delegates asked how the word "intervention" should be defined. Did the A. B. C. intervention in the conflict between the United States and Mexico constitute intervention?<sup>79</sup>

The Argentine delegate expressed sympathy with the idea of international intervention. Instead of saying that no State may intervene, he favored a proposal reading: "A State may not intervene." The latter wording would "leave the road open to the possible interference—I do not say intervention—of the international community which has been initiated with the Covenant of the League of Nations."<sup>80</sup>

At present, he said, there was an obvious tendency to place the solution of matters of an international character in the hands of the community of States, and he believed "this tendency would increase with the growth of world solidarity."

Before the session was ended, delegates of Argentina, Haiti, and Santo Domingo had introduced extreme non-intervention amendments. In reply to the proposals, the delegate of the United States, Prof. Jesse Reeves, said that the Costa Rica proposal, already adopted in the Sub-Commission, had been framed in general terms. But, if the Commission now wished to depart from general theory and introduce details and particular cases, he would feel obliged "to call attention to two exceptions to the general rule." Intervention was justified first for reasons of humanity, and second for self-defense.<sup>81</sup> He pointed to the liberation of Cuba as a result of the intervention of the United States, but expressed the hope that, in view of the acceptance of principles be-

76. The text is printed in the verbatim proceedings of the Conference, *Comision Internacional de Jurisconsultos Americanos, Reunion de 1927*, Vol. I, p. 87.

77. Cf. *Ibid.*, Vol. II, p. 66. At first it was decided to adopt the first line of the Pessoa draft,—namely, that no State should intervene in the domestic affairs of another. Members of the Committee stated that a state might intervene in the external affairs of another, but only to the extent of using good offices and mediation. *Ibid.*, Vol. I, p. 159.

78. *Comision Internacional*, Vol. II, p. 65, 67. Mr. Scott of the United States did not attend this session; Mr. Jesse S. Reeves, the other United States delegate, voted in favor of the proposal.

79. This brought forth the request of the Mexican delegate that Mexico did not consider this "intervention," and he begged delegates not to cite cases relative to Mexican questions. He did not wish to see the "serene camp of scientific discussion converted into a jousting field of political passion." *Ibid.*, Vol. I, p. 169.

80. *Comision Internacional*, Vol. I, p. 162.

81. *Ibid.*, Vol. I, p. 164.



fore the Commission, such intervention would not be necessary in the future. The tensivity of the situation was illustrated by the fact that the ballot on whether these amendments should be put to a vote, or whether they should be referred to a Sub-Commission, was eight to eight, the United States abstaining.<sup>82</sup> It was finally decided to proceed with the discussion of the other articles in the project.

Stating that the Costa Rica proposal was "insufficient," a delegate of the Dominican Republic again raised the intervention question at the tenth session of Sub-Commission A, on May 19. He advocated the adoption of the project framed by the American Institute of International Law.<sup>83</sup> Haiti and Mexico made similar proposals, as did Argentina. It was finally decided, apparently with Nicaragua in the background, that these different projects should be simply listed in an "historic exposition" in the record and submitted to the "sympathy and consideration" of the Conference at Havana.<sup>84</sup> This exposition was read at the last plenary session of the Conference, May 20, following which Mr. James Brown Scott of the United States delegation made a statement to the effect that the non-intervention article, which had been adopted, was carefully expressed in general terms. But if it was necessary to go into details, he would call attention to the fact that intervention might take place for reasons of humanity and for self-defense.<sup>84a</sup> He referred to the liberation of Cuba.

The Conference closed by the adoption of the phrase: "*Ninguno Estado puede intervenir en los asuntos internos de otro.*" It is understood that the United States delegates accepted this proposal, believing that the Spanish term *internos* should be interpreted to mean "domestic." It was an indisputable rule of international law in their opinion that no state should intervene in the "domestic" affairs of another; the United States could accept this rule and still interfere in the Caribbean and elsewhere,

whenever foreign property and lives were involved, since in such a case the affair ceased being "domestic" and became "external." Credence to this limited interpretation was given by the proposals of a more extreme nature placed before the Rio Commission by Haiti, Argentina, the Dominican Republic, Mexico and Paraguay, which led to reservations on the part of the United States, and which were not adopted.

In translating the Rio projects into English, the Pan American Union translated the word *internos* as "internal" which may have a slightly broader meaning than "domestic."<sup>85</sup> The proposal before the Havana Conference was that "No State may interfere in the internal affairs of another."

It was still possible, however, for Mr. Hughes to follow the limited interpretation placed upon this phrase by the United States jurists at Rio. Had he followed this interpretation the United States would have accepted the proposal and the intervention debate at Havana would have been avoided. But Mr. Hughes did not choose to follow this interpretation apparently in the belief that any restriction on the right of intervention, no matter how limited, might in the future cause embarrassment to the United States.<sup>86</sup>

#### THE MAURTUA REPORT OPPOSED

The project containing the non-intervention provision, entitled "States: Existence—Equality—Recognition," was referred with other projects to the Commission on Public International Law. In accordance with customary procedure, this project, together with the one on the Fundamental Bases of International Law, was referred to Mr. Maurtua of Peru, as the Reporter.

On February 4, he presented a report which in effect discarded the above non-intervention proposal in favor of a declaration

85. The text is printed in Pan American Union, *International Commission of Jurists, Public International Law*, p. 2.

86. In his speech of February 18, Mr. Hughes said, "If I should subscribe to a formula which others thought might prevent the action which a nation is entitled to take in these circumstances, there might come later the charge of bad faith because of acceptance of a formula with one interpretation in my mind while another interpretation of it is in the minds of those proposing the formula."

82. *Comision*, Vol. I, p. 175.

83. *Ibid.*, Vol. II, p. 387.

84. *Ibid.*, Vol. II, p. 390.

84a. *Ibid.*, Vol. I, p. 262.

of principles made by the American Institute of International Law in 1916.<sup>87</sup>

Before attempting to codify the law, Mr. Maurtua declared that they should first define the fundamental principles upon which the law was based.<sup>88</sup> In Mr. Maurtua's opinion "an organic charter of an international community" was wanted. Such a declaration of principles exists in the form of the Declaration of the American Institute of International Law of 1916, which reads as follows:

#### DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS<sup>89</sup>

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim, and, according to the Declaration of Independence of the United States, "to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between

and among the members of the society of nations involving its principles.

Mr. Maurtua spoke of "political measures, which at times are terribly grave" but which no superior international organization exists to deal with. Independence is not an absolute right. A state cannot "extend its independence to the point of ignoring the social obligations of the society in which it lives."

Interdependence is a network of rights and obligations which cannot be broken without destroying the basis of the society of nations. The new development in international law did not limit itself to rights, but also affirmed duties. Both must be respected. Further guarantees lie in the juridical organization of the continent and in the submission of the nations to honorable solutions of arbitration. Mr. Maurtua declared that the League of Nations Covenant has created a "system of international interdependence. It has regulated 'collective intervention.'" The League system has not dominated hitherto in America, but on the other hand America had shown a marked tendency to international individualism, which worked against attempts at organization at periodic Pan American Conferences.

He concluded by stating that the Declaration of 1916 was a Magna Charta for a large part of the world. In thus advocating the adoption of the 1916 declaration, Maurtua apparently wished to authorize intervention in those cases where a state had not fulfilled its duties. He hinted, however, that this intervention should take place under some form of international responsibility.

#### MR. HUGHES SUPPORTS PERU

Mr. Maurtua was followed by Mr. Hughes, who—in support of the proposal—said he would like to see "that Magna Charta created for the Western Hemisphere." He paid a high tribute to the American Institute of International Law which adopted the Declaration of 1916. Mr. Hughes did not mention the fact that this same Institute was the author of a much more extreme non-intervention proposal than that which was adopted at Rio.<sup>90</sup>

87. *Diario*, p. 486.

88. *Idem*.

89. Mr. Elihu Root praised this declaration in his address. "The Declaration of the Rights and Duties of Nations Adopted by the American Institute of International Law," published in the *American Journal of International Law*, 1916, p. 211. It has been criticized by Professor Jesse Reeves, a member of the Institute and one of the two jurists from the United States at the Rio conference, as "too simple" and because it fails to recognize the nature of international rights and duties. Reeves, J., *La Communauté Internationale*, p. 41. Also Dickinson, E. D. *The "Equal Rights" of Nations*. (New Republic. February 26, 1916. p. 91-3.)

90. Cf. p. 64.

Despite the support of Peru and the United States, the Declaration of 1916 did not meet approval. Mr. Guerrero of Salvador<sup>91</sup> asked why Maurtua had forgotten the work of the jurists at Rio. The American Institute did not represent the juridical opinion of America. He cited the minutes of the Rio meeting to show that the non-intervention proposal had been adopted unanimously and that Maurtua himself had voted for it.<sup>92</sup> According to the Agenda, the Havana Conference was obliged to consider the Rio report; government instructions had been based upon it. Obscure formulæ which would give rise to equivocations should not be adopted.<sup>93</sup>

The chief of the Guatemala delegation, Mr. Salazar, likewise stated that Mr. Maurtua had entered "into a field of the subjective and the abstract." His principles were "vague, lacking in precision and obscure." He could not conform to these declarations. A code should be unequivocal. If it were simply a matter of judging innocence or guilt, "The Ten Commandments should be enough, and if more was demanded, help could be found in the sublime principles of the Sermon on the Mount." But the Conference was not dealing with "subjective lucubrations of a purely moral order." He asked a clear and precise expression of "the conception of independence, sovereignty and juridical equality of States."

Mr. Jacinto R. de Castro of Santo Domingo adhered "without any reserve" to the statement of the Guatemala delegate. In his opinion, there was nothing in the Maurtua report which "can satisfy the unquiet spirit of our peoples." He declared that, while states had duties, it was neither logical nor admissible to subordinate the right of existence to the fulfillment of these duties.

"We can never accept the principle of intervention or interference in our internal or external affairs—in a word, anything which subordinates the sovereignty of the Dominican State to other States."<sup>94</sup>

Mr. Pueyrredón of Argentina arose and stated:

"Intervention—diplomatic or armed, permanent or temporary—is an attempt against the independence of nations, and cannot be justified on the plea or the duty of protecting the interests of citizens. For the weaker nations cannot exercise such a right when their citizens suffer damage during convulsions in strong states."

Mr. Urdaneta of Colombia advocated the adoption of the principle of non-intervention in the "most preemptory" form, and Mr. Vázquez of Honduras proposed the adoption of the extreme non-intervention proposal of the American Institute of International Law.

Mr. Héctor Castro of Salvador said that the Rio proposal did not go far enough. Mr. Amézaga of Uruguay criticized the Maurtua proposals on the ground that they simply proclaimed principles of natural law without converting them into principles of positive legislation.

After these declarations the Commission adjourned. In the next session Mr. Castro Beeche of Costa Rica aligned himself with the previous speakers in stating that Costa Rica adhered to the principle of non-intervention. Mr. Yepes of Colombia warned the Commission that this might be the last Pan American Conference, if "it did not correspond to the desires of the people of all the continent." Colombia, he stated, would not vote in any circumstances for any proposal rejecting the non-intervention proposal of the Rio jurists.

Mr. González Roa of Mexico referred to the Locarno agreements and to the proposals of President Wilson for guaranteeing the territorial integrity of Pan America. President Wilson did not "found the stability of the Continent on mere abstractions." Mr. Roa stated: "If we do not find a formula of conciliation and peace, we will bring about....the definite death of Pan Americanism."<sup>95</sup> Mexico adhered to the declarations of Argentina and the Dominican Republic. The complaint was made that Mr. Maurtua in drafting his report paid no attention to the advice of his colleagues who favored non-intervention. Mr. Díaz León of Paraguay, Mr.

91. Dr. Guerrero was Chairman of this Commission, but surrendered it for the purpose of this debate. *Diario*, p. 436.

92. Cf. p. 65.

93. *Diario*, p. 490.

94. *Diario*, p. 492.

95. *Diario*, p. 500.

Fernando Denis of Haiti and Mr. Ricardo Alfaro of Panama all accepted the principle of non-intervention.

### THIRTEEN STATES FAVOR NON-INTERVENTION

Thus, a total of thirteen states made strong declarations in favor of the principle of non-intervention accepted by the Rio jurists. Representatives of Ecuador and Brazil made less fervent declarations in favor of the Rio project; but Mr. Raul Fernández of Brazil stated that unanimity was not possible, and, unless a more acceptable formula could be found, the Maurtua report offered a basis of agreement. Chile favored referring the matter to a Sub-Commission. On the other hand, the 1916 Declaration of the American Institute of International Law was favored, not only by the delegates of Peru and the United States, but by the delegate of Nicaragua who declared that the 1916 proposal would assure more justice to the weak than would the Rio project. Mr. Ferrara, the Cuban Ambassador to Washington, also offered a eulogy to the interventions of the United States which freed Cuba from Spain. He referred to the word "intervention" as a word of glory to oppressed peoples.<sup>96</sup> Cuba favored the Maurtua report.

At the close of the meeting it was decided to refer the Maurtua report to a Sub-Committee, composed of Maurtua of Peru, Hughes of the United States, Elorduy of Mexico, Castro of Costa Rica, Guerrero of Salvador, Pueyrredón of Argentina and Lira of Chile. This Sub-Committee met in secret until February 17. It is understood that various formulae were proposed to reconcile divergent views. The non-intervention school was pitted against the intervention school. Little concrete consideration was given to the proposal for an internationally controlled intervention, because the Conference had already barred the Union from exercising political functions, and because this would recognize that intervention was justified under certain circumstances. Moreover, it was believed that this question of responsibility

could not be taken up until after public international law had been codified and arbitral machinery established.<sup>97</sup>

It is understood that Mr. Hughes finally obtained unanimous approval of certain rights and duties of States, but, when it came to phrasing them in a resolution, Mr. Pueyrredón and Mr. Guerrero held out for complete non-intervention. Agreement being seemingly impossible, it was decided unanimously that the consideration of the Fundamental Bases of International Law and States be postponed until the Seventh Conference. On February 13 the Conference voted that its session should end on the 20th—action which necessarily cut short the debates.<sup>98</sup>

A plenary session of the Conference was held February 18 for the purpose of giving formal approval to resolutions previously prepared by various committees. When the resolution postponing the intervention question until the next Conference was read, the new head of the Argentine delegation, Mr. Olascaoga, arose and read a declaration stating that the Argentine delegation, while respecting the decision of the Assembly, greatly regretted that no solution had been reached; he wished to reaffirm the "irrevocable convictions" of the Argentine Government in regard to non-intervention. Representatives of Salvador, Mexico, the Dominican Republic, Ecuador, Haiti, Guatemala and Colombia adhered in the names of their governments to the statement just made by Argentina—eight states in all. Mr. Hughes then arose and expressed his regrets, stating that he wished to make the above expressions his "own." He hoped the day would arrive when it would be possible to settle these matters harmoniously and to arrive at the codification of the postulates of International Law.<sup>99</sup>

97. Cf. p. 75 for the arbitration resolution.

98. Mr. Ayala of Venezuela stated that it was dangerous to fix a day for the closing of the Conference, because this led to the sacrifice of the affairs of major interest to America. *Diario*, p. 429, 528.

99. *Diario*, p. 528. According to the minutes, Mr. Hughes' statement could be interpreted to mean that he now adhered to the non-intervention proposal of Argentina. It is obvious that he did not intend to do so; apparently he misunderstood exactly what the Argentine delegate, who was talking in Spanish, had said. This is one of a number of instances when the fact that speeches were not formally translated from Spanish into English seemed to hamper the delegates of the United States.

96. Cf. p. 76.



He was followed by the representatives of Venezuela, Uruguay, Panama, Paraguay, and Costa Rica, who seemed to reiterate their adherence to the principle of non-intervention—making a total of thirteen states.

Delegates of Peru, Nicaragua, Brazil and Chile also expressed regret that unanimity had not been possible. The delegate of Nicaragua said in the discussion that he wished he could explain in public the "special situation" of his country toward which the curiosity of America and the entire world had been directed.<sup>100</sup> Whatever the actual vicissitudes of his country might be, concerning Nicaragua's independence, he believed firmly in its "most ample future."

Following these statements of regret, Mr. Alvarado of Guatemala asked why the Commission on Public International Law could not reach an agreement in view of the unanimous manifestation just made. Continuing, he said, "I would like to interpellate the Commission of Public International Law on this point."

In reply, the Chairman of the Commission, Mr. Guerrero, stated that an agreement within the Sub-Commission had not been possible; but in view of the declarations just made, apparently agreement now existed. Under these conditions he believed that the matter might be solved by a vote against intervention. "It seems to me," he said, "that all of the Delegations have spoken in this spirit."

President Bustamante then requested the delegate from Salvador to draw up a formula of a general character.<sup>101</sup>

#### INTERVENTION DEBATE REOPENED

Other business was then transacted, following which the Conference temporarily adjourned, so that delegates could participate in a ceremony given by the University of Havana to university professors who were delegates to the Conference. This adjournment allowed informal conversation to take place among the delegates.

<sup>100.</sup> *Diario*, p. 528.

<sup>101.</sup> In an address to the Council of Foreign Relations, March 8, 1928, Ambassador Fletcher, who was a member of the American Delegation, stated that Mr. Bustamante's action was a surprise and that evidently he had not understood what had been said.

When the Conference resumed its session, Dr. Guerrero presented the following motion:

"The Sixth Conference of the American Republics, taking into consideration that each one of the Delegations has expressed its firm decision that the principle of non-intervention and the absolute juridical equality of States should be roundly and categorically stated, Resolves:

"No State has the right to intervene in the internal affairs of another."

Debate upon the subject was thus, unexpectedly, reopened; and the first speaker was Mr. Raul Fernandes of Brazil. He stated that it had been impossible to reach an agreement between the absolute principle of non-intervention and the principle that, before the intervention question could be settled, law should be codified and an international organization established. He stated that the ideal of non-intervention could be realized only after the codification of international law. He was surprised that the question had again been raised. It was such a basic and important matter that, if there was no possibility of reaching unanimous decision, Pan Americanism might be disintegrated. There must have been a misunderstanding; while there was unanimous regret at the failure to reach an agreement, there was no agreement that the subject should now be reconsidered. The traditional policy of Brazil was opposed to the division of the countries of America into continental blocs. He asked that no vote be taken on the new motion.

The delegates of Colombia, Costa Rica, Ecuador and the Dominican Republic, while emphasizing the doctrine of non-intervention, adhered to the position of Brazil. Delegates of Salvador and Mexico apparently favored immediate action. Mr. Elorduy of Mexico stated that his government could not accept a resolution limiting intervention to internal affairs. He demanded the extension of the resolution to include external affairs.

Mr. Alvarez of Salvador stated that "The right of intervention is the right of might. It is the strong who intervene in the internal affairs of a small country. Legal means should first be established of ascertaining the facts; a decision should

then be given, after which the weak nation should be made to execute its duty." But "a country has no right to intervene," before such a juridical inquiry takes place, "simply because it owns fleets, cannons and armies..."

Mr. Hughes then arose and declared in part:<sup>102</sup>

"So far as I am personally concerned, I have never had a moment's desire to escape a discussion of this question. There is nothing to conceal. There are no hidden motives. There are no desires or ambitions which my country entertains which are opposed to the desires and aspirations of our sister Republics. I merely recognized that this was a question which needed time and further study to resolve in principles which all could accept, and that was the view which I supposed that all my colleagues on the sub-committee, and on the full Committee as well, entertained. I gladly acquiesced in their decision. Now what is the situation when we come to the actual facts of the case? There is no one here who does not have enjoyment in the free air of independence. My country was nurtured in the desire for independence. One hundred years ago we declared the policy that all the American Republics should be recognized in their independence. We have given our arms and our blood for the independence of the American Republics and are always ready to do so. We yield to none in the establishment of the ideal of sovereignty and independence for every one of the American Republics from the greatest to the smallest. And I have the right, speaking here on behalf of the Delegation of the United States, to declare the policy of my country. I joined readily in the resolution of the Delegation of Mexico against aggression. We want no aggression. We want no aggression against ourselves. We cherish no thought of aggression against anybody else. We desire to respect the rights of every country and to have the rights of our country equally respected. We do not wish the territory of any American Republic. We do not wish to govern any American Republic. We do not wish to intervene in the affairs of any American Republic. We simply wish peace and order and stability and recognition of honest rights properly acquired so that this hemisphere may not only be the hemisphere of peace but the hemisphere of international justice. Much has been said of late with regard to Nicaragua. There sits the Foreign Minister of Nicaragua, a Delegate of his country to this Conference. He can tell you the situation in Nicaragua and I can tell you that we desire nothing more than the independence and peace of his country and that we are there simply to aid them in obtaining free elections, in order that they may have a

sovereign and independent government. I mention that merely because I speak in a spirit of entire frankness. Now what is the real difficulty? Let us face the facts. The difficulty, if there is any, in any one of the American Republics, is not of any external aggression. It is an internal difficulty, if it exists at all. From time to time there arises a situation most deplorable and regrettable in which sovereignty is not at work, in which for a time in certain areas there is no government at all,—in which for a time and within a limited sphere there is no possibility of performing the functions of sovereignty and independence. Those are the conditions that create the difficulty with which at times we find ourselves confronted. What are we to do when government breaks down and American citizens are in danger of their lives? Are we to stand by and see them killed because a government in circumstances which it cannot control and for which it may not be responsible can no longer afford reasonable protection? I am not speaking of sporadic acts of violence, or of the rising of mobs, or of those distressing incidents which may occur in any country however well administered. I am speaking of the occasions where government itself is unable to function for a time because of difficulties which confront it and which it is impossible for it to surmount.

"Now it is the principle of international law that in such a case a government is fully justified in taking action—I would call it interposition of a temporary character—for the purpose of protecting the lives and property of its nationals. I could say that that is not intervention. One can read in text books that that is not intervention. . . Of course the United States cannot forego its right to protect its citizens. No country should forego its right to protect its citizens. International law cannot be changed by the resolutions of this Conference. International law remains. The rights of nations remain, but nations have duties as well as rights. We all recognize that. This very formula, here proposed, is a proposal of duty on the part of a nation. But it is not the only duty. There are other obligations which courts, and tribunals declaring international law, have frequently set forth; and we cannot codify international law and ignore the duties of States, by setting up the impossible reign of self-will without any recognition upon the part of a State of its obligations to its neighbors.

"When the sub-committee was appointed, Dr. Fernandes, then presiding over the full Committee, suggested that in this recognition of rights and duties on a perfectly fair basis might be found the solution of our problem. It was hoped that we might be able to declare a set of principles which would clearly define our opposition to all acts of aggression, which would clearly show our desire to maintain a sovereignty and independence of States, which would establish all the rights of States that any of you could

<sup>102.</sup> The text used here is the final revised form given out by the Department of State. The original speech was printed in part in the *New York Times*, February 19, 1928.

hope to see written into a code of international law, and which would at the same time recognize the obligations of States and provide a code which would represent not an isolated doctrine or a mere preachment for political purposes but the real principles of justice which we are trying to codify in this effort. It was with that purpose we worked in the sub-committee. It was not an easy task. It is not a simple task for a late afternoon at the close of the Conference. It is an easy task to indulge in the subtle simplicity of formulas that only express one-tenth of the truth."

#### IMPORTANCE OF MR. HUGHES' SPEECH

This speech has been regarded as of more than ordinary importance—partly because of its declaration that the American Government has no permanent designs upon the countries of Latin America—but also because it constitutes perhaps the only open defense made in an international conference of the intervention policy of the United States, and because it frankly attempts to place responsibility for this policy upon the internal condition of the Latin American countries.<sup>103</sup>

Following Mr. Hughes' speech, Mr. Guerrero declared:

"Now I believe it unnecessary to insist that a vote be taken on my proposal, since every resolution of the Conference to be valid must attain unanimity. In any case, I believe that the debate which has arisen so suddenly, and which no one sought, has been very useful: first, because almost unanimous aspirations have been expressed in one sense; and second, because we have had the pleasure of hearing the important declarations of Mr. Hughes. I withdraw the proposition."

But the delegate of Peru, Mr. Maurtua, did not let matters rest. He declared that the delegates had assumed an uncivilized (*selvática*) attitude and that in place of judicial formulae they had wished to bring a political battle into the Sixth Conference. The delegates who assumed this uncivilized attitude desired to defend themselves from intervention, but did not help

in preparing organs in which differences or conflicts presenting themselves on the Continent could be ventilated. Mr. Salazar and Mr. Guerrero both protested against the "charges" made by Mr. Maurtua. Mr. Denegri of Peru then made a speech which, according to the *Diario de la Marina*, would have been "more fitting in an election campaign." Mr. Guerrero, he said, was a vendor of false wares; whereupon Mr. Bustamante, the Chairman, sounded his bell, and asked the delegates to use words which would not alter the cordiality which had until now prevailed. He asked authorization to withdraw from the stenographic version any words which in the opinion of the President were lacking in necessary delicacy.<sup>104</sup>

This authorization was granted and the speeches of Mr. Hughes, Mr. Maurtua and Mr. Denegri, among others, were edited.<sup>105</sup>

The session ended by adopting the motion postponing the consideration of the Fundamental Bases of International Law and States until the next Conference which will meet in Montevideo in 1932.

Thus the Havana Conference placed iron-clad restrictions upon the political development of the Pan American Union, and it rejected the efforts of Argentina to bring important economic matters, such as tariffs, within its purview. It took no action in regard to intervention—a question which particularly affects the United States as the only power which has undertaken to "police" the Caribbean within recent years. The only resolutions which might operate to restrict the freedom of action of the United States in the future are: (1) a declaration against aggression; (2) a resolution providing for an Arbitration Conference, to be held in Washington next year.<sup>106</sup>

104. *Diario de la Marina*, February 19, 1928, p. 24.

105. Summaries of the original speeches were printed in the *Diario de la Marina*, February 19, 1928.

103. The *Diario de la Marina* stated that Mr. Hughes at times spoke with "great passion," while the correspondent of the *New York Times* stated: "before speaking Mr. Hughes was obviously getting more angry every moment. . . . When speaking, 'He was like a man who had been bated to the limit of his endurance. . . .'" *New York Times*, February 19, 1928.

106. The Conference indirectly hit at the intervention policy of the United States in adopting a modified form of the doctrine of *rebus sic stantibus*, which may bring about a revision of the United States' treaties with Panama, Cuba, and Haiti. This is discussed in the forthcoming Part II of the Report. The Conference also adopted a treaty providing for *de facto* recognition which may interfere with the present recognition policy of the United States toward Latin America. This is also discussed in Part II.



## ACTION ON AGGRESSION AND ARBITRATION

At the last plenary session Mr. González Roa of Mexico introduced a resolution, which was adopted, prohibiting acts of aggression.

Newspaper reports state that Mr. Guerrero offered an amendment in the last plenary session changing the text of the resolution from "war of aggression" simply to "aggression" for the purpose of prohibiting acts of aggression falling short of war.<sup>107</sup>

The text, as adopted February 18, 1928, is as follows:

The Sixth International Conference of American States:

Considering:

That the American nations should always be inspired in solid cooperation for justice and the general good:

That nothing is so opposed to this cooperation as the use of violence:

That there is no international controversy, however serious it may be, which can not be peacefully arranged if the parties desire in reality to arrive at a pacific settlement:

That war of aggression constitutes an international crime against the human species:

It resolves:

1. All aggression is considered illicit and as such is declared prohibited.
2. The American States will employ all pacific means to settle conflicts which may arise between them.

This resolution had previously been introduced by Mr. Roa on February 16, in the Committee on Public International Law. Mr. Hughes stated in reply:

"It is my happy privilege to say for the United States of America that we would join most heartily in a declaration that there shall be no war of aggression in America. I am in entire accord with the proposal that we should show that this hemisphere is dedicated to the interests of peace, and that we should endeavor to find pacific solution for all the controversies that may arise. . ."

He concluded by saying:

"I desire to show to you the sincere cooperation of the United States, which is opposed to any act of aggression; which is seeking nothing but the good order, the independence and the prosperity of all the American States."

In view of Mr. Hughes' vigorous defense

of the intervention policy of the United States, and his refusal to accept limitations upon this policy, it would seem that he did not regard intervention, even if by force, as an act of "aggression."

The principle of settling international disputes by arbitration has met with strong support in some Latin American Republics. The principle is written into the Constitution of Brazil. Apparently the first compulsory arbitration treaty covering all disputes between two states (except when they affect the principles of the Constitution) was signed in May, 1902 between Argentina and Chile.<sup>108</sup>

At the second Pan American Conference, held in 1902, Argentina, Bolivia, Santo Domingo, Guatemala, Mexico, Paraguay, Peru, Salvador and Uruguay signed a treaty providing for the arbitration of all disputes which do not affect national independence or national honor.<sup>109</sup> Between 1909 and 1919 American states entered into 120 obligatory conventions.<sup>110</sup>

The United States declined to sign the Pan American Arbitration Convention of 1902, out of opposition to the principle of compulsory arbitration. It merely adhered to a protocol (separate from this treaty) expressing sympathy for the convention signed at the Hague in 1899.<sup>111</sup>

With such exceptions as the Pan American Postal Convention, the United States has maintained this attitude and still declines to assume the obligations of a general obligatory arbitration agreement.<sup>112</sup>

108. Treaty of May 28, 1902. See Manning, W. R. *Arbitration Treaties among the American Nations*, p. 328. Cf. Urrutia, F. J. *La Evolucion del Principio de Arbitraje en America*.

109. Neither national independence nor honor "shall be considered as imperilled by any dispute about diplomatic privileges, boundaries, rights of navigation, or the validity, interpretation and fulfillment of treaties." Treaty of January 29, 1902. It became operative upon approval by three states. It was ratified by Salvador, Guatemala, Uruguay and Mexico. Manning, cited, p. 307.

110. Carbonell, N., *Las Conferencias Internacionales*, p. 563.

111. International Conference of American States, 2nd, 1901-02. *Report of the Delegates of the United States*, p. 9, 36.

112. Cf. Article 12 of the Pan American Postal Union Convention: League of Nations, *Treaty Series*, Vol. XXX, p. 157; Article 25, Universal Postal Convention of Madrid: Strupp, *Documents pour Servir a l'Histoire du Droit des Gens*, Vol. V, p. 392.

The latter article provides that disputes as to interpretation shall be submitted to arbitration.

Cf. also *International Arbitration and Plans for an American Locarno* (F. P. A. Information Service, Vol. III, No. 7); and *Arbitration and the United States*, (World Peace Foundation Pamphlets, 1928, Nos. 6-7.)

107. *New York Times*, February 17, 1928.



## THE ARBITRATION RESOLUTION

The Fifth Pan American Conference at Santiago in 1923 passed a resolution viewing "with complacency" the extension within the last few years of the principle of conciliation and of arbitration, approving the system of Conferences such as that of Washington in 1922, of commissions of investigation of fact and of arbitration, and agreeing to place before the meeting of Jurists at Rio de Janeiro the proposal of the Costa Rican Delegation in regard to the creation of a Permanent Court of American Justice, as well as other projects.<sup>113</sup>

The Jurists took no action on these proposals, simply drafting a treaty for the Pacific Settlement of International Disputes, which provided for good offices, mediation and conciliation and embodied the Bryan investigation plan. The project also stated that, "in the event of a serious question which endangers the peace of nations, any one of the parties can have recourse to the Governing Board of the Pan American Union which shall thereupon exercise the functions of a council of conciliation"—a proposal to impose political responsibilities upon the Governing Board. The project defined arbitration but imposed no obligation to arbitrate.

At Havana, Costa Rica and Colombia placed definite proposals before the Conference for the establishment of an American Court.<sup>114</sup>

113. The Costa Rica proposal provided for a court of one judge for each of the twenty-one states, serving for a term of ten years and chosen by a majority of the members of the Supreme Court of each state. The American Institute of International Law also prepared a project for a Pan American Court of Justice, giving each state a judge. Cf. F. P. A. *Information Service*, Vol. III, Supp. No. 4, p. 91.

114. For the text of the Colombia proposal see the *Diario*, p. 104. The Colombia delegation declared that an American court was particularly desirable in order to apply the Code of Private International Law adopted by the Conference (see Part II). The only limitation to the jurisdiction of the proposed court would be questions in regard to the constitution of each State and in regard to pecuniary contractual claims. Only in case of denial of justice in the local courts could such claims be taken to the international tribunal. Each state should have its own judge on the court, and there should be a court of first instance and one of appeal. The seat of the Court should be Havana. He quoted with approval Senator Borah's plan for the outlawry of war, and said that "international justice in America" is marked "by the absence of coercive sanctions" such as found in the League of Nations system. The Colombia delegate believed that public opinion in America was strong enough to enforce the award of the court. *Diario*, p. 106.

He did not mention the fact that several judicial and arbitration decisions on the American continent have gone unenforced—such as the Tacna-Arica decision arbitrated by President Coolidge and the decision of the Central American Court of Justice holding invalid certain provisions in the Bryan-Chamorro Treaty. See F. P. A. *Information Service*, Vol. III, No. 23. The United States has imposed sanctions upon recalcitrant neighbors to a greater extent perhaps than any European state within recent years, notably through the "police" activities of its marines.

Dr. Guerrero of Salvador also proposed the establishing of an American Conciliation Commission, independent of the Governing Board of the Pan American Union, which "shall look after the maintenance of peace and order in America. . . ." This Tribunal "shall be composed of five states," elected by the Pan American Conference. Its decisions shall not be binding or final; "but shall be considered as the reflection of the conscience of America."<sup>115</sup>

Cuba proposed the establishment of a conciliation section in the Pan American Union. All of these plans to vest political power in the Union came to an unsuccessful end.<sup>116</sup> The plan for the pacific settlement of international disputes was referred by Commission No. 2 to Mr. Alfaro of Panama as *ponente*. On February 2, Mr. Alfaro presented his report.<sup>117</sup> After examining the Rio project for the pacific settlement of disputes and proposing certain modifications in this project, he declared that the Rio jurists did not make any suggestion in regard to arbitration in the belief that such projects should be discussed, not by jurists but by delegates acting with political powers. Mr. Alfaro proposed the acceptance of the principle of obligatory arbitration, with exceptions safeguarding the independence and the constitution of States, and quoted Mr. Root to the effect that one reason why states did not submit their differences to arbitration was lack of confidence in the judges. But there were many difficulties in creating a single tribunal. Consequently he proposed that while the states members of the Union should accept the principle of obligatory arbitration they should have the greatest possible liberty in selecting a court.

In case of a dispute, resort could be had to one of the following tribunals: (1) a court composed of a single judge or arbitrator chosen by agreement; (2) a court of three judges, two of which are designated by the parties, and the third, an un-

115. Apparently Mr. Guerrero had in mind the conciliation commissions being established under League and other auspices in Europe.

116. Cf. p. 56.

117. His report is published in the *Diario*, p. 401. Questions arising out of differences in the interpretation of treaties or in international law should however, always be submitted to arbitration.

pire, named by the first two judges; (3) any other form of court organized by agreement; (4) the Pan American Court of International Justice if it should be created; (5) the Permanent Court of International Justice at the Hague; (6) the Permanent Court of Arbitration at the Hague.<sup>118</sup>

This report did not propose, therefore, to establish any one tribunal to which the American states should have recourse; it merely laid down the principle of compulsory arbitration—a principle which the United States has so far declined to accept.

The Alfaro report was not discussed in Commission No. 2 until February 16.<sup>119</sup> At that time several delegates pointed out that the proposal to exempt from arbitration controversies involving constitutional provisions and independence was too vague. Mr. Hughes declared that "from the standpoint of the United States there are few questions that could not be claimed to involve constitutional provisions. . . ." He said that certain justiciable questions could be arbitrated but there was another class of controversies which were not strictly international. "One State objects to the internal legislation of another State in a matter entirely within the province of that State. The objecting State should recognize that that is a matter of internal government. But in these days of intimate relations, internal government, in the actual force of its decisions, projects into areas where other governments seek to found a freer play [*sic.*]. So about internal questions, some controversies may arise. . . ." Such questions could be submitted to joint commissions "whose reports advising the different governments and legislatures, would be of great value." Referring to the joint Canada-United States Commission, he said that nations might be willing to be advised of the views of such a Commission

so that each legislature, "supreme in its place, can act with that knowledge."<sup>120</sup>

Moreover, Mr. Hughes believed that arbitration was suitable in "controversies relating to questions involving the interpretation of treaties or the principles of international law where the claims are for loss of life or personal injuries, or injuries to property, and where the reparation sought is entirely pecuniary. We could have a Claims Convention. . ." in addition to a broader convention.

Mr. Hughes did not favor Mr. Alfaro's suggestion that the third judge should be selected by two Chiefs of State. He suggested instead "that we should select three outstanding non-American jurists, who should select, with a sense of responsibility of their reputation and juridical standing, the third arbitrator, who in that case might more closely approach to our ideal of an impartial judge."

At the next session of the Commission a delegate of Uruguay stated that his government accepted arbitration for "all controversies of whatever class."<sup>121</sup>

It was finally decided to postpone the question of arbitration and to refer it to a conference to be held in Washington within one year. The text of the resolution is as follows:

RESOLUTION: The Sixth International Conference of American States resolves:

WHEREAS: The American Republics desire to express that they condemn war as an instrument of national policy in their mutual relations; and

WHEREAS: The American Republics have the most fervent desire to contribute in every possible manner to the development of international means for the pacific settlement of conflicts between States:

1. That the American Republics adopt obligatory arbitration as the means which they will employ for the pacific solution of their international differences of a juridical character.

2. That the American Republics will meet in Washington within the period of one year in a conference of conciliation and arbitration to give

118. If after two months' negotiation an agreement about reference to the first three tribunals is lacking, either party may propose to take the dispute to the Pan American Court if it exists; if the State to which this initiative is addressed does not care to submit it to the Pan American Court, it may propose its submission to the Permanent Court of International Justice; if no agreement is reached within three months the Permanent Court of Arbitration acquires *inso facto* jurisdiction.

119. Cf. *Diario*, p. 564.

120. For some reason Mr. Hughes did not wish to apply this solution in answer to Mr. Pueyrredón's economic thesis. Cf. p. 59.

On February 14 the Commission on Public International Law appointed a sub-committee to report on the question of arbitration. *Diario*, p. 564.

121. He qualified this by stating that account should be taken of the connection between an arbitration treaty and questions relative to the rights of aliens. *Diario*, p. 565.

conventional form to the realization of this principle, with the minimum exceptions which they may consider indispensable to safeguard the independence and sovereignty of the States, as well as matters of a domestic concern, and to the exclusion also of matters involving the interest or referring to the action of a State not a party to the convention.

3. That the Governments of the American Republics will send for this end plenipotentiary juriconsults with instructions regarding the maximum and the minimum which they would accept in the extension of obligatory arbitral jurisdiction.

4. That the convention or conventions of conciliation and arbitration which may be concluded should leave open a protocol for progressive arbitration which would permit the development of this beneficent institution up to its maximum.

5. That the convention or conventions which may be agreed upon, after signature, should be submitted immediately to the respective governments for their ratification in the shortest possible time.

It should be pointed out that this obligation binds the United States only to participate in this Conference and not to sign any compulsory arbitration agreement.

#### REASONS FOR POLITICAL FAILURE

The action of the Havana Conference in prohibiting the exercise of any political functions by the Pan American Union and otherwise restricting its activity, the failure of the Conference to reach an agreement upon non-intervention despite categorical statements in its favor by at least thirteen states, and the temporary postponement of the arbitration question may be attributed to a number of causes, of which the following are perhaps the most important.

1. The foreign policy of the United States, which since 1920 has held aloof from any form of international organization restricting its liberty of action. Mr. Hughes' statements at Havana seemed to conform to this policy. A number of Latin American governments at the Conference, however, were animated by equally nationalistic motives.

2. The belief expressed by some Latin American states that any strengthening of the Pan American Union would simply increase the power of the United States over

Latin America, because of its predominant position in the Union.<sup>122</sup> Some delegates were frank to say that in their opinion the League of Nations offered a more disinterested forum to conciliate American disputes than the Pan American Union.

3. The weakness and division of the Latin American countries. Some Latin American delegates did not press the issue of non-intervention further, or oppose the policies of the United States out of consideration of the special relations of their respective countries with the United States. It is understood that the delegations of Nicaragua, Chile, Peru, Cuba and Brazil were instructed not to stand out against the United States on any important issue. Both Peru and Chile were more or less bound to follow the United States because of the incidents connected with the Tacna-Arica arbitration.<sup>123</sup>

The delegations of Haiti and Nicaragua represented governments under the control of United States marines. Cuba was the host of the Conference; moreover the Machado government is working for the reduction of the United States sugar tariff, and the repeal of the Platt Amendment.<sup>124</sup> Before the Conference the Machado government warned the Havana newspapers against criticisms of the United States and during the Conference it suppressed several journals because of such criticism.<sup>125</sup> On January 16 it prevented two distinguished Haitians—M. Bellegarde and M. Hudicourt, —both having newspaper credentials, from entering Cuba to report the Conference. Apparently it was feared that these Haitians would raise the question of the occupation of Haiti by the United States. A spectator had attacked this occupation from the galleries at the Santiago Conference in 1923, in front of the United States delegation.

On the other hand, the policy of Argentina at the Conference may have been influenced by the tariff and sanitary quarantines of the United States.

<sup>122</sup> Cf. p. 53.

<sup>123</sup> Cf. F. P. A. *Information Service*, No. 23, Vol. III.

<sup>124</sup> *Cuba and the United States*, (Foreign Affairs, Jan., 1928, p. 231.)

<sup>125</sup> Cf. p. 62.



## PAN AMERICANISM VS. INTERNATIONALISM

The Pan American movement has arisen out of the belief that the American republics have a set of interests distinct from the interests of other parts of the world. When the first Pan American Conference was held in 1889, statesmen said that the American countries were bound together by geographic propinquity, by common adherence to republicanism, by distrust of European intentions, and by isolation from Europe, due to the fact that communications between the Americas and Europe were not developed.

It has been argued that there is a body of American international law distinct from the general rules of international law.<sup>126</sup> This idea was to a certain extent accepted by the American Institute of International Law in its projected codes drawn up in 1925 for the Governing Board. In a General Declaration, it was stated, "that the existence of American International Law is due to the geographical, economic, and political conditions of the American continent, to the manner in which the new Republics were formed and have entered the international community, and to the solidarity existing between them."

"American International Law, thus understood, in no way tends to create an international system resulting in the separation of the Republics of this hemisphere from the world concert."<sup>127</sup>

In his report at the Havana Conference, Dr. Maurtua declared:

"It is precisely in America that cooperation takes on a special physiognomy. All of the American nations have common political ideals. History and geography have created between them across the centuries, commercial, social and spiritual ties of an order not different but more intense than with the rest of the world. From the time of the revolutions of independence a current of friendship and fraternity has circulated through the continent."<sup>128</sup>

Animated by the same spirit, publicists have suggested the establishment of a Pan American League of Nations and Court of Justice.

Nevertheless the growth of communications within the past few years has reduced the isolation of the American nations and brought them into close touch with Europe. The day of monarchy in Europe has waned and democracies have arisen in some countries there more worthy of the name than the disguised and undisguised dictatorships in some countries of Latin America. Consequently there are those both in North and South America who wonder whether the former community of interests or ideals upon which Pan Americanism was supposedly founded still exists, and whether the United States and Latin America have not more in common with various countries in Europe than with each other.

If a customs union for the Americas were established, if the Pan American Union were converted into a political organization empowered to conciliate various American disputes and to supervise policing the troublesome area in the Caribbean and Central America, Pan Americanism might become a reality. But the Havana Conference rejected any proposal granting Pan Americanism political vitality.

In certain respects a basis for Pan Americanism may still exist. In Europe most of the railways are government-owned and hence may be easily subjected to treaty regulations; in the Americas, railways are for the most part privately owned; they can be regulated best through private rate agreements. Perhaps the most visible expression of Pan American unity is the Pan American Postal Union of 1921 in which letters between nineteen American countries pay half the maximum fees fixed by the Universal Postal Union of Madrid.<sup>129</sup> An international office at Montevideo performs certain duties for the Union. However, England and the United States have established a similar arrangement, and there is nothing to prevent the extension of this type of restricted union to other European countries.

In a few respects, the Havana Conference acted on the theory that a vital community of interests in the Americas still exists.

126. Cf. Alvarez, A. *Droit International Américain, son Fondement, sa Nature*.

127. Pan American Union. *Codification of American International Law*, Project No. 2, p. 26.

128. *Diario*, p. 488.

129. Convention of September 15, 1921, signed at Buenos Aires. League of Nations, *Treaty Series*, Vol. XXX, p. 157.



Thus it passed a resolution to the effect that "No American state may place obstructions to the emigration or immigration of the other States nor limit to a determined number the citizens of the other State."<sup>130</sup> This resolution was aimed at the quota system of the United States.

The United States delegation expressly stated at Havana that immigration was a matter exclusively within the jurisdiction of Congress. Nevertheless Secretary of State Kellogg declared before the Senate Committee on Immigration on March 5, 1928, in opposing the recommendation of Secretary of Labor Davis favoring the application of the quota to all American nations, that for forty years the United States had been seeking to establish a close relationship with Latin American countries and to demonstrate to them that this nation has a peculiar interest in their welfare. If the quota were now imposed, it would be impossible, in his opinion, "to convince the people of those countries that the move was otherwise than one of an unfriendly character."<sup>131</sup> Congress is not, however, obliged to follow this advice.

Likewise the Havana Conference passed a resolution looking toward the establishment of a Pan American Institute of Intellectual Cooperation which may duplicate the activities of the International Institute at Paris, working under the auspices of the League of Nations.<sup>132</sup>

But in other and more numerous directions, the Havana Conference seemed to minimize the uniqueness of Pan Americanism. The Commission of American Jurists at Rio declined to accept the term "American International Law," as suggested by the American Institute of International Law. At Havana Mr. Guerrero said that "to admit the existence of American international law would be to make more marked the divisions between the Continents and furthermore it

would admit something which I do not believe exists, that is to say, peculiarities which give to American peoples greater rights or duties of another nature than those which all the States of the world enjoy."<sup>133</sup> Both the Rio jurists and the Conference failed to approve any plan for an American League, or Court. Mr. Bustamante, President of the Havana Conference, recently asked "whether there is any advantage in establishing a new Court instead of making use of the one that already is in existence, and which, with the necessary modifications, is in a position to meet the just demands of America." (He suggests an annual meeting at Havana. . .) "There is a risk, graver in international affairs than in domestic matters, of decisions asserting contradictory doctrines, which might cause conflicts between the different parts of the globe and might imperil the fundamental unity between moral conceptions and legal doctrines."<sup>134</sup>

#### DRAWBACKS OF REGIONAL AGREEMENTS

The Havana Conference also recognized the limitations of Pan Americanism in its disposition of five economic matters; (1) aviation, (2) trade marks, (3) radio, (4) immigration, (5) Chamber of Commerce.<sup>135</sup>

In the discussion on the aviation convention, Mr. Espil of Argentina pointed out<sup>136</sup> that there were three aviation conventions in existence. (1) The Paris convention of 1919; (2) the Madrid air convention signed by Spain and a number of Latin American countries in 1926; and (3) the convention before the Havana Conference. All three of these conventions contained conflicting rules, yet certain Latin American states had signed them all.<sup>137</sup> The result was confusion which could be solved only by an international convention. At his suggestion the Conference adopted a resolution asking President

130. *Diario*, p. 342.

131. *New York Times*, March 6, 1928. The Government of Panama has passed a law prohibiting the entrance of negroes, but exempting "Individuals originating from Republics making part of the Pan American Union." This exemption was passed following a protest from the Haitian Government. *Haiti, Bulletin Officiel du Département des Relations Exterieures*, No. LV, 1927, p. 13.

132. Cf. Part II.

133. *Diario*, p. 490.

134. Bustamante, A. S., *The World Court*, p. 313.

135. Cf. Part II for a technical discussion.

136. *Diario*, p. 448.

137. The Convention of Paris was signed by the following Latin American countries: Cuba, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, and Uruguay. With the exception of Haiti, these same states signed the Convention of Madrid of October, 1926. A detailed summary of the Madrid Convention is given in Marques de Olivart, *El Derecho Internacional Publico en los Ultimos Veinticinco Anos (1903-1927)*, Vol. I, Part I, p. 296. The Paris Convention of October 13, 1919 is in League of Nations, *Treaty Series*, Vol. XI, p. 174.

Coolidge to call an international aviation conference.

#### **SUPERIORITY OF BERNE TRADE MARK SYSTEM**

Despite the existence of an international trade mark bureau, functioning at Berne, the Pan American Union has attempted to maintain a separate trade mark system for the last forty years.<sup>138</sup> The International Bureau has been a success, but according to numerous spokesmen, the Havana Bureau has been a failure.<sup>139</sup> The Berne office has registered 50,034 trade marks during this period in comparison with 1,251 registrations of the Pan American official bureau at Havana.

Moreover, two systems of registration create inconveniences. If Latin American countries should give manufacturers from the United States protection which is not granted to Europeans, discriminations would arise. The Argentine delegation declared that "this type of union, as happens with other unions, such as the postal, telegraphic and radio-telegraphic unions, which respond to manifestations of full international intercourse, should never have been conceived, without danger of entering into a régime of preference, except on a universal scale. If the International Registry is necessary to protect trade marks satisfactorily abroad, we wish to have a complete register and of a universal character. . ." At the Third Pan American Conference the Mexican delegate proposed that the American states adhere to the International Conventions establishing the Bureau at Berne. Argentina made the same proposal at the Fourth Conference, and again at Havana. In December, 1926, the International Chamber of Commerce took the same point of view. As a result of this discussion at Havana, the Conference passed a resolution asking that a special trade marks' conference be called, to decide whether the Pan American trade mark system should be abandoned in favor of the Berne system.

A similar situation was reached in regard to a Pan American radio convention. In the

previous November, an international radio convention had been signed by representatives of eighty states in Washington, including Latin American states and the United States. The agenda of the Conference provided for a consideration of the results of the Inter-American Electrical Communication Conference of 1924. But it was decided that the governments should be urged to ratify not only this Convention, but also the Radio Convention signed by eighty states, the preceding November at Washington.

The Conference also decided that Pan American immigration should be discussed at the International Immigration Conference which was to meet in Havana in March, 1928. The agenda called for the organization of a Pan American Chamber of Commerce, but no such action was taken, presumably because of the existence of the International Chamber, with which most American business men are satisfied.

#### **PAN AMERICANISM WEAKENED**

Thus in these economic matters, a strong feeling existed in Havana that regional agreements, which ignored the fact that economic ties between Europe and the Americas are closer than between American countries themselves, are inherently defective, and that the true solution of such questions lies in international agreements negotiated either in *ad hoc* conferences or through the League of Nations. If the results of a Pan American conference are the same as the results of an international conference in which the American states have already participated, there is a duplication of effort. If the results are different, conflicts between Europe and America are likely to arise, as in the case of aviation, which will hinder intercourse or which will grant special privileges to American states in violation of most-favored-nation treatment.

In curtailing rigidly the powers of the Pan American Union, in failing to act in regard to intervention or arbitration, and in favoring an international solution of aviation, trade marks, immigration and radio, the Havana Conference seemed to diminish the importance of Pan Americanism in favor of

<sup>138</sup>. Cf. the *Diario*, p. 228.

<sup>139</sup>. Cf. Part II for reasons.

a wider international method of cooperation. While in the long run, the results of the Havana Conference may therefore strengthen the League of Nations, any such conclusion does not necessarily follow. International conferences for *ad hoc* purposes may be utilized outside the League, such as the Radio Telegraphic Conference held in Washington; moreover, nationalism may supplant both Pan Americanism and internationalism. The Havana Conference showed that there was no such thing as a Latin American bloc but that there were certain states which leaned on the United States and others which acted independently. The very lack of unity at Havana may be another indication that Pan Americanism is weakening, in favor of special alignments between certain Latin American states or between such states and European countries such as France and Spain.<sup>139a</sup>

#### THE BARRIER OF THE LEAGUE

It should be pointed out, moreover, that seventeen out of the twenty-one Latin American states are members of the League of Nations and have accepted obligations and guarantees which may at some time erect an important barrier between them and the United States which is not a member of the League. The United States has been reminded of this fact, not only in the case of Panama's reference to the proposed United States-Panama Treaty at the last Assembly,<sup>140</sup> but also in the statement of the

Argentine representative, Mr. Cantilo, at the Security Commission of the League in March, 1928, in regard to the Monroe Doctrine. He declared:

"The Monroe Doctrine is a political declaration made by the United States. The policy which it embodies was at the time of its origin extremely useful to us, for, being in opposition to the tendencies of the Holy Alliance, it eliminated the danger of European attempts at the reconquest of America. We gladly recognize the service thus rendered by the United States, whose history contains so many fine pages, recording work done for liberty and justice.

"It would, however, be inaccurate to confer upon the Monroe Doctrine the style of a regional agreement, as does Article 21 of the Covenant of the League. The Monroe Doctrine is a one-sided political agreement which never has been to my knowledge explicitly approved by other American countries."

It is reported that a month previously the Argentine Ambassador at Paris told the French Foreign Minister that Argentina in fact no longer recognized the Monroe Doctrine.<sup>141</sup>

It is not probable that acute difficulties would arise immediately at least, between a vigorous Pan American Union, having jurisdiction by mutual consent over all American affairs, and an international League of Nations. A real problem might, however, arise out of the abstention of the United States from any form of international organization restricting the liberty of action of its members. If the United States followed a policy of "isolation" this abstention might not create difficulties. But the United States stated at Havana its right to interfere with Latin American countries and (by implication) to be the judge of their obligations; it also insists upon the right of maintaining and defining the Monroe Doctrine, which is not limited to the immediate defense of the territory of the United States, but extends to the whole of the American continent.

139a. In an address before the Spanish National Assembly, General Primo de Rivera, the Prime Minister of Spain, recently declared that the government was doing everything possible to develop the relations between Spain and its former colonies. He cited the coming expositions of Seville and Barcelona as aiding in this respect. He also mentioned the sale of warships to Argentina; treaties of arbitration signed with Chile and Uruguay; the improvement of relations with Ecuador; sending a Spanish civil guard to Peru and signature of a treaty in regard to literary property; friendship between Spain and Bolivia; cordial relations with Colombia; exchange of students with Panama; organization of a national guard in Salvador by a mission from the Spanish civil guard; treaty in regard to literary and artistic property with Costa Rica; treaty of commerce with Cuba. *Le Temps*, April 6, 1926, p. 2.

140. Cf. F. P. A. Information Service, Vol. III, Supp. No. 4, p. 87.

141. *Manchester Guardian Weekly*, March 2, 1928, p. 164.

## APPENDIX I

Quotas of the Twenty-one American Republics in support of the  
Pan American Union, for the year ending June, 1929

	Population	Quotas at \$1.00 per thousand people
Argentina .....	10,087,118	\$ 10,087.12
Bolivia .....	2,520,538	2,520.54
Brazil .....	33,767,342	33,767.34
Chile .....	3,986,158	3,986.16
Colombia .....	6,617,833	6,617.83
Costa Rica .....	520,766	520.77
Cuba .....	3,382,915	3,382.92
Ecuador .....	2,000,000	2,000.00
El Salvador .....	1,634,000	1,634.00
United States .....	132,256,000 <sup>1</sup>	132,256.00
Guatemala .....	2,004,900	2,004.90
Haiti .....	2,030,000	2,030.00
Honduras .....	710,000	710.52
Mexico .....	14,234,799	14,234.80
Nicaragua .....	638,119	638.12
Panama .....	446,098	446.10
Paraguay .....	1,000,000	1,000.00
Peru .....	4,620,000	4,620.00
Dominican Republic .....	897,405	897.41
Uruguay .....	1,678,000	1,678.00
Venezuela .....	2,562,334	2,562.33
Total .....	227,594,840	\$227,594.86

Quota contributed by the United States to cover the expenses of printing at the Government Printing Office .....\$ 20,000.00  
 Receipts from the sale of publications ..... 6,600.00  
 Other receipts ..... 3,805.14

Total .....\$258,000.00

1. Includes population of dependencies.

## APPENDIX II

## Convention on the Pan American Union

The American Republics, whose moral union rests on the juridical equality of the Republics of the Continent and in the mutual respect of the rights inherent in their complete independence, desirous of promoting efficaciously the harmonious development of their economic interests, and the coordination of their social and intellectual activities, and recognizing that the relations between peoples are regulated by law as well as by their legitimate individual and collective interests:

Agree to continue their joint action of cooperation and solidarity by means of periodic meetings of the International Conferences of American States, as well as by means of organs established by international agreements, and through the Pan American Union which has its seat in Washington, and whose organization and functions shall be regulated by the present Convention in the following terms:

## ARTICLE I

*Organ of the Union of the American States*

The Union of the American States tends to the fulfillment of its object through the following organs:

- (a) The International Conference of American States.
- (b) The Pan American Union under the direction of a Governing Board with its seat in the city of Washington.

- (c) Every organ that may be established by virtue of conventions between the American States.

Each State enjoys, as of right, representation at the Conferences and on the Governing Board.

## ARTICLE II

*The International Conference of American States*

The Conferences shall meet at periodic intervals. The Governing Board of the Pan American Union shall determine the date on which they shall meet, provided that in no case shall a longer period than five years elapse between Conferences, except in case of *force majeure*.

## ARTICLE III

*Governing Board*

The Government of the Pan American Union shall be vested in a Governing Board composed of the representatives that the American Governments may appoint. The appointment may devolve upon the diplomatic representatives of the respective countries at Washington.

Besides his own country, a member of the Governing Board may serve as special representative of one or more countries, in which case such representative shall have as many votes as countries represented.

The Board shall elect its Chairman and Vice-Chairman annually.



## ARTICLE IV

*Executive Officers*

The Governing Board shall appoint the following officers:

A Director-General, who shall have charge of the administration of the Pan American Union, with power to promote its most ample development, in accordance with the terms of this Convention, with the regulations, and with the resolutions of the Board, to which body he shall be responsible.

The Director-General shall attend, in an advisory capacity, the meetings of the Governing Board, of the committees appointed by the Board, and of the International Conferences of American States, for the purpose of giving such information as may be required. The necessary expenses shall be paid out of the funds of the Pan American Union.

An Assistant Director, who shall act as Secretary of the Board.

The Director-General shall prepare the internal regulations by which the various divisions of the Pan American Union shall be governed, in accordance with the provisions of the present Convention, and shall submit them to the Governing Board for approval.

The Director-General shall present to the Governing Board annually, at the regular session of the Board in November, a detailed budget for the ensuing fiscal year.

The Director-General shall submit to the consideration of each Conference of the American Republics a detailed report on the work of the Pan American Union during the period preceding the meeting of the Conference.

The Director-General shall appoint, with the approval of the Governing Board, the personnel necessary to the work of the Pan American Union, endeavoring as far as possible to distribute the positions among nationals of the countries, members of the Union.

## ARTICLE V

*Maintenance of the Pan American Union*

The Governing Board of the Pan American Union shall determine the quota which is to be paid by each of the Governments, members of the Union, for the maintenance of the Pan American Union. But increases in the budget of the Pan American Union exceeding by more than 25% the budget of the preceding year shall be approved by the unanimous vote of the Governing Board, the representatives being given time to consult their respective Governments. The quota shall be determined proportionally on the basis of the latest official statistics of population in possession of the Pan American Union on the first day of July of each year. The budget shall be communicated to the Governments, members of the Union, before the first day of the ensuing calendar year, with an indication of the quota which each country shall pay, which shall be paid before the first of July of that year.

The Governing Board shall elect from among its

members a Committee charged with examining, on the dates determined by the Board, the accounts of the expenditures of the Union, in conformity with the provisions established by the regulations, and the opinion of three experts to be appointed for the purpose.

## ARTICLE VI

*Functions of the Pan American Union*

The Governing Board and the Pan American Union, shall exercise the functions conferred by this Convention, subject to the condition that they shall not exercise functions of a political character.

The functions of the Pan American Union are:

1. To compile and distribute information and reports concerning the commercial, industrial, agricultural, social and educational development, as well as the general progress of the American Republics.

2. To compile and classify information referring to the Conventions and Treaties concluded among the American Republics and between these and other States, as well as to the legislation of the former.

3. To assist in the development of commercial, industrial, agricultural, social and cultural relations, in the study of the problems of labor, and of a more intimate mutual acquaintance between the American Republics.

4. To act as a Permanent Commission of the International Conferences of American States; to keep their records and archives; to assist in obtaining ratification of the Treaties and Conventions; to carry out and cooperate in securing compliance with the resolutions adopted by the International Conferences of American States, within the limit of its powers; and to prepare, in agreement with the Governments, the program of the International Conferences of American States, and submit to the Conferences a project of Regulations.

5. To perform such other functions entrusted to it by the Conference or by the Governing Board by virtue of the powers conferred upon it by this Convention. When a State believes that its vital interests are involved in a question, or that an obligation may be imposed upon it, such State may require that the resolution of the Board be adopted by unanimous vote.

6. The Governing Board may promote the meeting of International Conferences of Experts to study problems of a technical character of common interest to the countries, members of the Union, and to this end may request the Governments to appoint experts to represent them at those Conferences, which shall meet at the place and time determined by the Board.

To carry out the purposes for which the Institution is organized, the Governing Board shall provide for the establishment of such administrative divisions or sections within the Pan American Union as may be deemed necessary.

## ARTICLE VII

*Deposit and Exchange of Ratifications*

The instruments of ratification of the treaties, conventions, protocols and other diplomatic instruments signed at the International Conferences of American States shall be deposited at the Pan American Union by the respective representative on the Governing Board acting in the name of his Government, without need of special credentials for the deposit of the ratification. A record of the deposit of the ratification shall be made in a document signed by the representative on the Board of the ratifying country, by the Director-General of the Pan American Union and by the Secretary of the Governing Board.

The Pan American Union shall communicate to all the States, members of the Union, through their representatives on the Board, the deposit of the ratification.

## ARTICLE VIII

*Communication of Official Documents to the Pan American Union*

The Governments of the countries, members of the Union, shall transmit to the Pan American Union two copies of the official documents and publications which relate to the purposes of the Union, as far as the internal legislation of the respective countries may permit.

## ARTICLE IX

*Cooperation With Official Pan American Organizations*

For the purpose of coordinating the results of the work of other official Pan American organizations, and establishing relations of close cooperation with them, the program of work and the development of their activities shall, wherever possible, be the subject of agreement between their directive bodies and the Governing Board of the Pan American Union.

The Governments, members of the Union, which may not have an efficient organ for the study and investigation of Pan American affairs, shall establish a committee composed of persons of experience in such matters, or an office attached to the Ministry of Foreign Affairs, to be entrusted with Pan American affairs.

These committees or offices shall have the following duties:

- (a) To cooperate with their respective Governments to obtain ratification of treaties and conventions, and to give effect to the resolu-

tions adopted by the International Conferences of American States;

- (b) To furnish the Pan American Union promptly with the information it may need in the preparation of its work;
- (c) To present to the Union through the proper channels such projects as they may consider adapted to the purposes of the Union.

## ARTICLE X

The Governing Board of the Pan American Union shall prepare the regulations and fix the status of the members of the staff, determining their salaries and conditions of retirement.

## ARTICLE XI

All correspondence and matter transmitted through the mails to the Pan American Union, which bears the frank used by the Union, and all correspondence or matter transmitted by the Pan American Union, shall be carried free of charge by the mails of the American Republics.

## ARTICLE XII

The contracting States may withdraw from the Pan American Union at any time, but shall pay their respective quotas for the period of the current fiscal year.

## ARTICLE XIII

This Convention cannot be modified except in the same manner in which it was adopted.

## ARTICLE XIV

The present Convention shall be ratified by the signatory States, and shall remain open for the signature and ratification of the States represented at the Conference that may not have been able to sign.

The President of the Conference, through the Government of the Republic of Cuba, shall send to the Governments represented at the Conference an authenticated copy of the present project of Convention in order that, if the Governments approve, it may receive their adhesion. For this purpose, the Governments that may adhere to the Convention, shall authorize their respective diplomatic or special representatives in the city of Havana, to sign the Convention. All the States having signed, the Convention shall be submitted by each State for ratification. The present Convention shall become effective when all the States represented at the Conference receive notice that all the ratifications have been deposited with the Pan American Union, and that the adhesions and ratifications of the twenty-one American Republics have been received.

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